S. HRG. 99-916

INDIAN RESERVATION SPECIAL MAGISTRATE

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 1177

TO ESTABLISH A SPECIAL MAGISTRATE WITH JURISDICTION OVER FEDERAL OFFENSES WITHIN INDIAN COUNTRY AND TO AUTHORIZE TRIBAL AND LOCAL POLICE OFFICERS TO ENFORCE FEDERAL LAWS WITHIN THEIR RESPECTIVE JURISDICTIONS, AND FOR OTHER PURPOSES

SEPTEMBER 11, 1986
WASHINGTON, DC

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ESTABLISH A SPECIAL MAGISTRATE WITH JURISDICTION OVER FEDERAL OFFENSES WITHIN INDIAN COUNTRY AND TO AUTHORIZE TRIBAL AND LOCAL POLICE OFFICERS TO ENFORCE FEDERAL LAWS WITHIN THEIR RESPECTIVE JURISDICTIONS

THURSDAY, SEPTEMBER 11, 1986

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room 562, Dirksen Senate Office Building, Hon. John Melcher presiding.

Present: Senators Melcher and Murkowski.

STATEMENT OF HON. JOHN MELCHER, U.S. SENATOR FROM MONTANA

Senator MELCHER. The committee will come to order.

This morning, we are having the hearing on S. 1177. This is a bill to establish special magistrates on Indian reservations with special authority.

Similar bills have had two field hearings in previous Congresses. The reason we feel something is necessary is that despite the view commonly expressed here in Washington by the executive branch, whether it is Republican or Democrat, that everything is taken care of, there are too many cases where justice falls through the cracks.

We have Federal jurisdiction in some instances, State jurisdictions in some instances and tribal jurisdiction in some instances. And, despite claims to the contrary, there is instance after instance where justice for non-Indians and Indians fall through the cracks. The testimony, I am sure, will be mixed. We will hear testimony that everything is taken care of. We will have testimony that indeed a lot of things are not taken care of, and there is a need for chinking out those cracks. I am sure we will hear testimony from the tribal witnesses that we need to beef up the tribal court system, and that perhaps, would take care of almost everything.

While to a certain extent, justice does fall through the cracks everywhere, the lack of assurance of justice to Indian and non-Indian citizens of this country is the most glaring example, the most glaring pattern, that exists.

We have great ideas about justice here in this country and I think we ought to start with basic justice on our reservations.

[The text of S. 1177 follows:]

II

99TH CONGRESS
1ST SESSION

S. 1177

To establish a special magistrate with jurisdiction over Federal offenses within Indian country and to authorize tribal and local police officers to enforce Federal laws within their respective jurisdictions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 21 (legislative day, APRIL 15), 1985

Mr. MELCHER introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To establish a special magistrate with jurisdiction over Federal offenses within Indian country and to authorize tribal and local police officers to enforce Federal laws within their respective jurisdictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Reservation Special Magistrate and Law Enforcement Act of 1984".

SEC. 2. (a) Part III of title 28 of the United States Code is amended by adding immediately after chapter 43 the following new chapter:

"CHAPTER 44—INDIAN RESERVATION SPECIAL MAGISTRATES

"Sec.
"651. Appointment and tenure.
"652. Jurisdiction and powers.

"653. Remand of custody.
"654. Practice and procedure.
"655. Contempt.
"656. Training.
"657. Authorization of appropriations.

"§ 651. Appointment and tenure

"(a) The President, by and with the advice and consent of the Senate, shall appoint special magistrates as may be necessary to serve each Indian reservation and such additional areas as are within the Indian country as defined in section 1151 of title 18 and over which the United States exercises criminal jurisdiction under the provisions of chapter 53 of title 18.

"(b) No person may be appointed or reappointed to serve as a special magistrate under this chapter unless such person is and has been for at least five years a member in good standing of the bar of the highest court of the State (or one of the States) in which he or she is to serve.

"(c) In any case in which the President finds that a United States magistrate who meets the qualifications of this Act is already reasonably available, the President shall give preferential consideration to such sitting magistrate for appointment as special magistrate under this section.

"(d) The appointment of any individual as a special magistrate shall be for a term of eight years and his or her reappointment shall be subject to the requirements of subsection (a) with respect to the advice and consent of the Senate.

"(e) Upon appointment and confirmation, the special magistrate shall reside within the exterior boundaries of the reservation to be served or at some place reasonably adjacent thereto.

"(f)(1) Except as provided in paragraph (2), persons appointed as special magistrates under this chapter shall be appointed as full-time magistrates and shall receive compensation at the rates fixed for full-time magistrates under section 634.

"(2) Whenever, in the discretion of the President, it is determined that the position to which the special magistrate is being appointed will not have a sufficient caseload to warrant appointment as a full-time magistrate, then such special magistrate shall be appointed as a part-time magistrate and shall receive compensation at the rates fixed for part-time magistrates under section 634, the level of compensation to be determined by the President.

"(g) Except as otherwise provided in this chapter, the provisions of subsections (c), (g), (h), (i), and (k) of section 631, relating to limitations on employment, oaths of office, recordation of appointment, removal from office, and leaves of absence shall apply to special magistrates appointed under this chapter.

"(h) Expenses of special magistrates shall be paid in the same manner as provided in section 635 for payment of expenses for magistrates.

"(i) The provisions of section 632 describing the character of service to be performed by full-time and part-time magistrates shall apply to any person appointed as a special magistrate under this section.

"§ 652. Jurisdiction and powers

"(a) Each special magistrate serving under this chapter shall have, within the territorial jurisdiction prescribed by his appointment—

"(1) all powers and duties conferred or imposed upon United States magistrates by law or by the Rules of Criminal Procedure for the United States District Court;

"(2) the power to administer oaths and affirmations, impose conditions of release under section 3146, of title 18, and take acknowledgments, affidavits, and depositions; and

"(3) the power to conduct trials under section 3401 of title 18, in conformity with and subject to the limitations of that section except that the special designation provided for in subsection 3401(a) of title 18, shall not be required, and the provisions of section 3401(b) of title 18, extending to a defendant the right to refuse trial before a magistrate and elect to be tried before a judge of the district court for the district in which the offense was committed, shall not be applicable to trials before the special magistrate.

"(b) Each such magistrate so serving under this chapter shall have any other duty or power which may be exercised by a United States magistrate in a civil or criminal case (including any tort action), to the extent authorized by the court for the district in which he serves.

"§ 653. Remand of custody

"If the special magistrate determines there is no Federal jurisdiction over an offense brought within his court, he may direct that custody of the defendant be remanded to the appropriate law enforcement officials.

"§ 654. Practice and procedure

"(a) Except as otherwise provided in this section, the practice and procedure for the trial of cases before magistrates serving under this chapter, and the taking and hearing of appeals to the district courts, shall conform to that set forth in section 3401 of title 18, and in rules promulgated by the Supreme Court pursuant to section 3402 of title 18, and section 636(c) of this title.

"(b) Any defendant appearing before a special magistrate may be assisted by a lay spokesman of his or her choice, and assistance by such spokesman, whether paid or voluntary, shall not be considered the practice of law. Assistance by such counsel shall not waive the right of the defendant to appointed counsel in any case in which he or she is entitled to such appointed counsel.

"(c)(1) In any case in which the defendant requests a trial by jury before the special magistrate, only persons who actually reside within the reservation in which the offense is alleged to have been committed shall be eligible to serve on the jury panel.

"(2) The special magistrate, in consultation with tribal authorities and county and municipal officials, shall develop and maintain for purposes of jury selection a list of persons residing within the reservation over which the special magistrate has jurisdiction. Such list shall be developed or compiled from lists of persons eligible or registered to vote in State, county, municipal, or tribal elections. In developing such list, the special magistrate shall take care that such list fairly elects a cross section of the population within the reservation.

"(3) In any case in which the defendant requests a trial by jury before the special magistrate, such jury shall be composed of six persons whose names appear on the jury selection li.: prepared by the special magistrate.

"(4) Except as provided in this section, the rules of the district court pertaining to the selection of jurors and juror eligibility for trial before magistrates shall be applicable.

"(d) Tribal police officers, Bureau of Indian Affairs police officers, and Federal, State, and local law enforcement officers, acting within the geographic area in which they have jurisdiction under the laws of their respective governments, are authorized to execute any warrant for arrest, or warrant for search and seizure, or any other summons, subpoena, or order which the special magistrate is authorized to issue in criminal cases arising within the Indian country, or under the general rules of Federal Criminal Procedure or the Federal Rules of Procedure for the Trial of Minor Offenses before the United States Magistrates.

"(e) The provisions of the Court Interpreters Act of 1978 (Public Law 95-539; 92 Stat. 2040) shall apply to trials before the special magistrate.

"§ 655. Contempt

"(a) In a proceeding before a special magistrate, any of the acts or conduct described in section 636(e) as constituting a contempt of the district court when committed before a magistrate shall constitute a contempt of court when committed before a special magistrate, and the procedures provided in section 636(e) for prosecution of such contempt shall govern prosecutions for contemptuous conduct when committed before a special magistrate.

"(b) All property furnished to any special magistrate shall remain the property of the United States and, upon the termination of his or her term of office, shall be transmitted to the successor in office or otherwise disposed of as the Director orders.

"(c) The Director shall furnish to each United States special magistrate appointed under this chapter an official impression seal in a form prescribed by the conference. Each such officer shall affix his seal to every jurat or certificate of his official acts without fee.

"§ 656. Training

"The periodic training programs and seminars conducted by the Federal Judicial Center for full-time and part-time magistrates as provided in section 637, shall also be made available to special magistrates appointed under this chapter. This shall include the introductory training program offered new magistrates which must be held within one year after their initial appointment. The cost of attending such programs shall be borne by the United States.

"§ 657. Authorization of appropriations

"Beginning October 1, 1985, there is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter.".

(b) The table of chapters for part III of title 28 of the United States Code is amended by inserting after the item for chapter 43 the following:

"44. Indian Reservation Special Magistrates .... 651.".

Sec. 3. Section 542 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c)(1) The Attorney General shall appoint such additional assistant United States attorneys in each judicial district as may be necessary to prosecute all crimes and offenses committed within—

"(A) any Indian Reservation, or

"(B) any portion of Indian country (within the meaning of section 1151 of title 18, United States Code),

located in such district over which the United States excercises criminal jurisdiction. All assistant United States attorneys appointed under the preceding sentence shall be specifically designated as responsible for such prosecutions.

"(2) For each special magistrate appointed under section 651, the Attorney General shall appoint at least 1 assistant United States attorney under paragraph (1) whose primary responsibility shall be the prosecution of crimes and offenses before such magistrate.".

○

Senator MELCHER. The witness list is very short for a problem as large as this problem is, and as widespread as this problem is across the United States. But it's a short witness list for a very urgent purpose.

The reason is this: We are in the closing days of this Congress, and it might be said, why have any hearing at all since we are so close to the end? I think that events sort of prompt this action.

One of the witnesses today is a representative from the Salt River Pima-Maricopa Reservation who has a proposal before the committee that would respond, perhaps conclusively, to part of the problem of law enforcement on that reservation. And yet it takes on an added dimension which is quite large in that it would be an act of Congress passed after the *Oliphant* case. As such, it would become a very far-reaching precedent, we believe, and not an adequate precedent for all of the problems that do exist.

Let me be a little more specific on that.

While the Salt River proposal—I believe it is S. 2564—would probably be very satisfactory and very worthwhile, the precedent it would set might alarm a great number of non-Indians.

Non-Indians on an Indian reservation are not likely to appreciate being placed in the position of having recourse only to a tribal court on many matters. I am not saying that about Salt River, because I think that the limitations that are placed in that bill could be, and probably are, widely accepted by Indians and non-Indians alike.

But the precedent it might establish, perhaps for non-Indians on larger reservations, might not be very satisfactory. In the long run, it might cause Congress to overreact and place even more unworkable patterns of enforcement of justice for minor offenses, on Indian reservations.

So, it is for that reason that I think this hearing is timely.

There will be witnesses from the administration, and there will be witnesses from the Federal Court System, and there will be witnesses from the tribes.

The three reservations that were solicited to send representatives are from, first of all—I have already mentioned the Salt River Reservation—and the Fort Peck Reservation in Montana and the Oglala Sioux Reservation in South Dakota.

Those are two fairly large reservations. I happen to be familiar with both of them. I have been a frequent visitor over the years, over the past 20 years, to the Fort Peck Reservation, and I think I know the circumstances that exist there.

In regard to the Pine Ridge Reservation in South Dakota, the reservation of the Oglala Sioux, as a boy I used to live out on the reservation, and I think I understand some of their problems. Not all, but some.

The contrast of the thirties and the forties, with the sixties, seventies, and eighties on reservations with regard to law enforcement is rather dramatic. In the thirties and the forties, there was no problems with law enforcement as far as non-Indians were concerned on the Pine Ridge Reservation.

Now, I cannot speak for the Oglala Sioux. They may have seen a lack of justice in those years, but law enforcement, as I knew it, was BIA policemen who were always prompt in whatever minor cases that I was aware of as a boy. There was certainly no problem as far as the non-Indians were concerned. I invite the witness from the Oglala Sioux Tribe to tell us what they feel is the case now.

I think that our best approach today will be to listen to the witnesses promptly and get the testimony on the record. There may be some questions we would like to ask to make it a better record.

But I call on Mark Richard, Deputy Assistant Attorney General for the Criminal Division, U.S. Department of Justice, as our first witness. I ask that Hazel Elbert, Deputy to the Assistant Secretary for Indian Affairs, Department of the Interior, also be at the witness stand. We will take your testimony one right after the other, and if we have questions, we will ask them immediately thereafter.

Mr. Richard?

Mr. RICHARD. Thank you very much, Mr. Chairman.

[Prepared statement of Senator Melcher appears in the appendix.]

STATEMENT OF MARK M. RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY EZRA H. FRIEDMAN, SENIOR LEGAL ADVISOR, GENERAL LITIGATION AND LEGAL ADVICE SECTION, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. RICHARD. My name is Mark Richard. I am Deputy Assistant Attorney General in the Criminal Division of the Department of Justice.

With your permission, I would like to introduce on my right my colleague, Mr. Ezra H. Friedman, who is special counsel to the section chief responsible for overseeing law enforcement policies and procedures on Indian reservations at the Department of Justice.

Mr. Chairman, again, with your indulgence, I would propose to merely summarize my statement and submit for the record the complete statement.

Senator MELCHER. Yes; please do so, Mr. Richard.

Mr. RICHARD. Thank you, sir.

Mr. Chairman, I am pleased to be here to present the views of the Department of Justice on S. 1177, a bill that would establish special magistrates with jurisdiction over Federal crimes in Indian country.

While we have no disagreement whatsoever with the intention of the bill, namely, the improvement of law enforcment in Indian country, we believe that S. 1177 provides an unnecessarily cumbersome and expensive solution to what is a sporadic and by no means universal problem.

Consequently, we oppose its enactment.

The motivating factor behind this bill, among others, as well as behind its predecessors introduced in the 96th and 98th Congresses, is a perception that there does not seem to be any clear Federal jurisdiction over what is being done on the Indian reservation.

While jurisdiction in Indian country is complex, it has been our experience that it is generally well understood by those officials who deal with it on a daily basis.

We believe that jurisdiction over all persons and Indian country is clear, and no legal uncertainties exist. In general, Federal jurisdiction attaches for all offenses committed in Indian country except:

One, tribal courts have jurisdiction over crimes committed by Indians against Indians other than the major crimes listed in 18 United States Code 1153;

Two, jurisdiction over offenses committed by non-Indians against other non-Indians lies exclusively with the States; and

Three, jurisdiction over victimless crimes committed by non-Indians lies with the State unless the crime poses a direct threat to individual Indian or tribal interests, in which case Federal jurisdiction may be asserted.

Turning now to S. 1177 and its specific provisions. The bill establishes a system of special magistrates. One such special magistrate would be appointed by the President with the advice and consent of the Senate for each area of Indian country over which the United States exercises criminal jurisdiction.

The special magistrates would serve an 8-year term and would have to reside within the boundaries of the reservation they serve, or reasonably adjacent thereto. They would serve either full time or part time, depending on a Presidential determination of what was needed.

S. 1177 also provides that the special magistrates would exercise all powers and duties conferred or imposed on U.S. magistrates by law or by the Rules of Criminal Procedure, and would have the power to conduct trials under section 3401 of title 18 in conformity with and subject to the limitations of that section except that the special designation provided for in subsection 3401(a) shall not be required, and the provisions of 3401(b), extending to a defendant the right to refuse trial before a magistrate and elect to be tried before a judge of the district court for the district in which the offense was committed, shall not be applicable.

Moreover, S. 1177 contains a provision allowing nonlawyers to appear on behalf of defendants.

Finally, the bill establishes a special jury system under which only residents of the reservation where the crime was committed can be impanelled. The juries are to be comprised of only six members.

Initially, we question the requiring of Presidential appointment of special magistrates. Because magistrates must work closely with the district court judges on a day-to-day basis, the judges should have a voice in the selection process, in our judgment. Furthermore, the cumbersome process of Presidential appointment and Senate confirmation, in our judgment, would rob the system of much of its flexibility and potential responsiveness. Presidential appointment, rather than an appointment by the district court, coupled with the language in the bill withdrawing the district court's power to designate magistrates as competent to try misdemeanors, substantially lessens the supervision by the district courts of the magistrate's conduct.

We believe that it is probable that Congress does, in fact, have the authority to constitutionally establish article I courts in Indian country and denominate the judges as special magistrates, and vest them with jurisdiction over Federal misdemeanors. Nevertheless, the fact that the bill sets up article I courts, coupled with the provisions allowing nonlawyer representation of the accused, creates, in our judgment, at least the appearance that persons brought before such courts are being offered a different and somewhat inferior brand of justice.

Our most significant objection, however, Mr. Chairman, is that we are not convinced that the special magistrates approach is, in fact, necessary. S. 1177 would not, in fact, alter the way jurisdiction is divided between Federal, State and tribal courts.

The special magistrates courts would not have jurisdiction over crimes committed by one Indian against the person or property of another Indian. And the special magistrates courts would not have jurisdiction over crimes by one non-Indian against another. The special magistrates could only hear misdemeanor cases. A misdemeanor is a case for which the maximum term of imprisonment is 1 year or less. That limitation would preclude magistrates from hearing cases involving Indian defendants brought under the Major Crimes Act. And a non-Indian charged with committing one of the serious offenses against an Indian, while prosecutable in a Federal court, is certainly deserving of prosecution at the felony level with appropriately severe sentences.

That leaves, in effect, relatively few crimes for the special magistrates. Their caseload would consist essentially of victimless crimes by Indians and, occasionally, misdemeanors by non-Indians. I would note that at the present time victimless crimes by Indians are usually handled by tribal courts, although Federal courts also have jurisdiction.

Establishing special magistrates on Indian reservations to handle all of these cases would, in effect, weaken tribal courts as well. While some tribal courts, like those in any other system, may be less than perfect, we have no indication that all, or even very many of them, are unequal to the task of handling such minor offenses as traffic violations and disorderly conduct committed by members of the tribe.

As for victimless crimes committed by non-Indians and minor offenses committed by non-Indians against Indian persons or property, the State courts have jurisdiction over these offenses. For victimless crimes, State jurisdiction is, with some exceptions, exclusive. We are aware of the view of some persons that there is a de facto gap in Indian country law enforcement because some State prosecutors allegedly are unwilling to prosecute these offenses by non-Indians.

In theory, at least, placing special magistrates on Indian reservations would provide another forum in which to prosecute those cases of victimless crimes in which there is Federal jurisdiction. Such special magistrate courts would also be another forum to prosecute crimes by Indians committed against non-Indians or victimless crimes by Indians. We are also aware that some U.S. attorneys have been criticized for declining too many of these cases to the detriment of the reservation communities. On balance, however, we do not think that creating a new system of magistrates for every Indian reservation is the most effective solution to the problem of either State or Federal declinations.

As you know, problems in Indian country are not uniform from one reservation to another. They differ widely from State to State and even among the reservations in a particular State. We believe that these problems may better be addressed by continuous cooperation among State, tribal and Federal prosecutors, rather than the creation of an additional court system that would likely weaken tribal courts and would probably discourage State officials from prosecuting non-Indians in State courts.

On many reservations, tribal and BIA police have been cross-deputized as State officers, and State law enforcement officers have been deputized as tribal or BIA police officers. Such cross-deputized officers may make an arrest without regard to the Indian or non-Indian status of the apparent offender and then bring him or her before the appropriate court. We recognize that cross-deputization does not always work. Nevertheless, in some situations it apparently does and represents the type of cooperation we expect to see emulated by prosecutorial officials.

In closing, Mr. Chairman, I would like to emphasize that we at the Department of Justice have attached great priority to the need for enhanced law enforcement on Indian reservations. We have taken steps to better sensitize prosecutors, investigators, and the entire law enforcement community to ensure that appropriate attention to this problem is given. While we are not unaware of the perceived problems in law enforcement in Indian country, we do not believe, in conclusion, that the system of special magistrates contemplated by S. 1177 represents the best approach to alleviate these problems.

That concludes my prepared statement and summary of that statement, and I would be happy to answer questions at this time.

Thank you.

[Prepared statement of Mr. Richard appears in the appendix.]

Senator MELCHER. Thank you very much, Mr. Richard.

Now, we will hear from Hazel Elbert.

STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY OF INDIAN AFFAIRS (TRIBAL SERVICES), U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JOE LITTLE, CHIEF, JUDICIAL SERVICES BRANCH, BUREAU OF INDIAN AFFAIRS

Ms. ELBERT. Thank you, Mr. Chairman.

Before I begin my comments, I would like to introduce Joe Little, who is chief of our Judicial Services Branch in the Bureau of Indian Affairs.

Mr. Chairman, I am pleased to be here today to discuss S. 1177, the Indian Reservation Special Magistrate and Law Enforcement Act.

This bill would provide for Presidential appointment of magistrates to serve each Indian reservation where the United States exercises criminal jurisdiction. Such magistrates would have the same powers as those conferred on U.S. Commissions and other duties and powers exercised by U.S. magistrates authorized by the district court in which he or she serves. They would serve either full- or part-time depending on the need.

The bill would also allow nonlawyers to appear on behalf of defendants and would establish a special jury system on which only residents of the reservation on which the crime occurred could serve. Juries would be composed of six members.

Mr. Chairman, we oppose enactment of S. 1177. Although the Bureau of Indian Affairs supports your efforts to attempt to improve the law enforcement machinery in Indian country, we feel that the proposed legislation will not accomplish this and may actually result in the undermining of the tribal judicial system.

Since my colleague from the Department of Justice so aptly described the current jurisdictional situation in Indian country in his statement, I do not see the need to comment further on this matter, but will briefly comment on the legislation.

First, we feel that the appointment of a special magistrate to serve each Indian reservation as directed by the legislation is unrealistic. It could result in over 500 special magistrates throughout Indian country. The cost and support services would be substantial, and many reservations would not support enough cases to warrant even part-time magistrates.

Second, it appears that current law would allow for an increase in Federal magistrates and part-time magistrates where the need for magistrate services might exist. Rather than establish an additional judicial layer, the Bureau would recommend several changes under current law that might better meet the law-and-order needs of Indian country.

We would suggest amending the provisions in 25 U.S.C. 1302 to allow tribes to impose penalties of up to 1 year imprisonment and fines of $1,000;

Direct and appropriate funds to law enforcement and tribal courts to ensure that they establish adequate minimum operating budgets not subject to fluctuating Indian priority system funding;

Amend the provisions of the Indian Child Welfare Act to allow for reciprocity in a wider range of juvenile related cases other than just child custody proceedings; and that we

Amend any current laws that might exist which would restrict Federal magistrates from holding hearings in Indian country;

Provide statutory authority delineating BIA law enforcement duties and powers; and

Allow tribes to assume criminal jurisdiction over non-Indians, provided a particular tribe request such authority and such a request is evaluated by the Congress on a case-by-case basis against the special needs of the reservation, the capability and resources of the tribe, and the views of those most directly affected.

I believe implementation of these recommendations would be most cost-effective, would strengthen tribal court systems, and would bolster the current Federal court system, resulting in a narrowing of the gap between tribal court systems and the Federal court system, if any exists.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions.

[Prepared statement of Ms. Elbert appears in the appendix.]

Senator **Melcher**. Senator Murkowski, I believe, has to be at another meeting. I will recognize him.

Senator **Murkowski**. Thank you.

I have a number of former prisoners-of-war that are waiting for me outside, and I thank you, John, for accommodating me.

I noted in your opening statement a reference that only a few States have been granted authority by Congress for criminal jurisdiction on reservations under Public Law 83-280. Included in this is the States of Alaska, California, and Minnesota.

I would like to request the administration for some background and history on why these States were particularly selected, what was the justification, why not the others, a bit of a rationale, and then my specific question, gentlemen—and this would be directed to the administration—is the proposed legislation that directs the President to appoint special magistrates as may be necessary to serve each Indian reservation in such additional areas as are within the Indian country, as defined under section 1151 of title 18, over which the United States exercises criminal jurisdiction under the provisions of chapter 53 of title 18, which, according to our evaluation also includes native allotments under that law.

So, my question is specific: what effect would this provision have on my State, Alaska, and would you please provide for the committee a legal analysis of the impact of this provision?

The concern is specific in the sense of, since we already have criminal jurisdiction and we have the question of native allotments, there is clearly a necessity of having a clear definition from the administration so that we don't get an overlap here of interpretations.

So, I would appreciate your providing that as soon as possible, and I might also add, could that be made available within the next week to 10 days? Is that conceivably possible?

Mr. RICHARD. We will try to meet that request within the timeframe you propose.

Senator MURKOWSKI. I would appreciate that.

Thank you.

I have no further questions.

[Material to be supplied appears in prepared statement of Mr. Richard.]

Senator MELCHER. Thank you.

Mr. Richard, you speak of State jurisdiction. I will submit for the record, immediately after the witnesses have spoken, a statement by James McCann, county attorney, Roosevelt County, Wolf Point, MT.

However, I want to read three paragraphs of his very brief testimony to you:

> I am speaking of the types of cases that have come across my desk as county attorney, first; cases where I had a terrible time in justifying my actions. The law precluded me from doing anything but what I did. These were in the area of misdemeanor assaults, primarily misdemeanor assaults committed by non-Indians against Indian persons. It has always been the understanding of myself and various defense counsel who have appeared in cases where I did attempt to present cases to the court based on facts where the victim would be an Indian and the defendant would be a non-Indian that we lacked jurisdiction. They were dismissed at the local level, and they were never appealed.
>
> However, in 1983, an appeal was brought up off the Crow Reservation, based on those types of facts, that went to the Montana Supreme Court. The Montana Supreme Court said that the State did indeed not have jurisdiction over those types of offenses. The court said all of the offenses that were committed by or against Indian persons within the exterior boundaries of the reservation are under the exclusive jurisdiction of the Federal court.
>
> The cases that I have had to reject or to deny prosecution were sometimes serious in that maybe the injuries were not so serious, but that the social structures that

> were damaged by the actions of whatever individual might have caused the assault, were serious. Whether it would be in a school setting or whether it be in a social setting or even business setting in the streets, the social fabric is damaged. For that reason, I felt it incumbent upon the Federal courts to have a forum in which these cases could be brought.

Mr. Richard, this testimony, by a county attorney for the county which encompasses most of the Fort Peck Indian Reservation, describes the type of problem we are trying to resolve.

Your testimony on State jurisdiction, of course, does not touch this point at all.

Can you tell me why?

Mr. RICHARD. Mr. Chairman, I would best respond by saying that we are of the view that the decision you refer to is erroneous. We do take the position that in that situation, where there is a non-Indian offender committing an offense against an Indian, there is State jurisdiction.

Senator MELCHER. What do you base that on?

Mr. RICHARD. On our analysis of 18 U.S.C. 1152 and 1153 and the Assimilative Crimes Act.

Senator MELCHER. Would you like to correct the Montana Supreme Court?

Mr. RICHARD. Well, I do think it was in error, but if I may continue just for moment, sir. We are not questioning whether there is not concurrent jurisdiction at the Federal level in that kind of situation. We do recognize that some States have taken exception to our interpretation of these provisions and do hold, as you have cited, that there is no State jurisdiction.

Senator MELCHER. Obviously, justice was not party to the 1983 case, then.

Mr. RICHARD. I do not believe we were, sir.

Senator MELCHER. Isn't that part of the problem, then?

You assert what the law is, but you don't show up to appeal what competent courts have decided the law is.

Mr. RICHARD. Well, I am not sure——

Senator MELCHER. And this is just one State in Indian country. I don't think we are unique in that.

Mr. RICHARD. What I wish to add, though, sir; was that the bill, as proposed, would not have an impact on this problem. The question of Federal jurisdiction is not changed, if you will, in any respect by any provision, as we understand the proposed bill. So, to the extent that S. 1177 is passed, this would not address the problem that you cite. It would provide another forum for the Federal system to respond to the problem——

Senator MELCHER. Well, to cut this short, Mr. Richard, we think the bill does address that problem specifically. Your testimony does not enlighten us why it does not address it. However, if you think the bill does not address that specific problem, why not give us the language that you think will correct it?

Mr. RICHARD. Well, sir; it is our view that over those kinds of offenses we already have jurisdiction.

Senator MELCHER. Who are "we"?

Mr. RICHARD. The Federal system.

Senator MELCHER. The Federal system has jurisdiction?

Mr. **Richard**. Yes; that there is concurrent jurisdiction with the States in that situation.

Senator **Melcher**. That is concurrent?

Mr. **Richard**. Concurrent, that is correct.

Senator **Melcher**. You are saying that both the Federal Government and the State have jurisdiction.

Well, our problem is: we have to deal with the real world, and the real world is where at least the Montana Supreme Court has said there is no State jurisdiction. Now, these county attorneys cannot act there at their whim. Even though they are elected by the people, they are there as members of that court, and they cannot go beyond the bounds of that court.

Mr. **Richard**. I am not suggesting they do.

What I am suggesting, sir; is that in those instances where you have State decisions saying that they do not have jurisdiction, they do not have concurrent jurisdiction, as we believe they do; that, I agree, puts the onus at this state of the bidding on the Federal system to handle those classes of cases.

Senator **Melcher**. Well, this is a 1983 decision, and, by the way, one of the members of the Montana Supreme Court is an Indian.

Mr. **Richard**. Well, I am just suggesting, sir; that under the present system we have jurisdiction to handle those cases in the Federal system.

Senator **Melcher**. Do you know why jurisdiction is not assumed, then?

Mr. **Richard**. That I would have to venture is a function of the prosecutor's assessment of the particular cases and the strength of the cases, and those kinds of judgments.

Senator **Melcher**. Well, let me tell you, it is not that simple, you know. Some prosecutor makes a judgment. The prosecutor is a U.S. attorney, is he not?

Mr. **Richard**. That is correct.

Senator **Melcher**. How far do you think he is from Fort Peck?

Mr. **Richard**. I am sure it is an appreciable distance.

Senator **Melcher**. It certainly is, and he is not coming up there for first-time offenders. McCann's testimony goes on to say that he prevailed on the U.S. attorney in one instance with a third-time offender.

Mr. **Richard**. We have, Mr. Chairman——

Senator **Melcher**. And I want to make this point: Justice is not served by getting the U.S. attorney out there in just the case of one third-time offender. That is not my idea of justice, nor, I am sure, is it your idea of justice.

The fact is, justice is falling between the cracks with Federal jurisdiction and for a very simple reason: It is about 200 miles for that U.S. attorney to show up, and he does not show up.

Mr. **Richard**. Mr. Chairman, I would point out that we believe that under the existing laws and statutes applicable here, there is flexibility for appointing magistrates to sit on reservations, if that is deemed appropriate.

What I am suggesting, sir; is that there are mechanisms in place now for addressing that problem pointed out by the one local prosecutor.

I am not suggesting it is not a problem.

Senator MELCHER. All right. I can accept that. But I want to close off this one point in our discussion by saying that if you believe, meaning the Justice Department, believe firmly that States do have jurisdiction, I do not know why you do not have a case to establish that.

Mr. RICHARD. I want to make it clear that we are talking about concurrent jurisdiction.

Senator MELCHER. Yes.

Mr. RICHARD. OK. I do not know whether in the past we have considered in any particular instance trying to go as an amicus in that prosecution or in that appeal.

Senator MELCHER. Well, anything that you hold so clear in your mind—and I am speaking not of you personally, but of the Justice Department—and so emphatically hold, I do not know why you do not bring a case. You do not even have to wait to be an amicus.

Mr. RICHARD. I was saying, Mr. Chairman, that in the State prosecutions, obviously we at the Federal level are not a party to the proceeding, so we cannot directly participate in the appeal. The only opportunity would be, at best, according to State rules, whether we can file as an amicus.

I am not familiar enough with any particular prosecution that may have occurred whether we have, through the local prosecutor, urged our legal interpretation to the State Supreme Courts. I cannot answer that at this time.

Senator MELCHER. I cannot present any other State Supreme Court that has reached the same conclusion however, I am of the strong opinion that what the Montana Supreme Court found was the general determination of many other States in Indian country. I do not think it serves any purpose to say, in theory, what the Justice Department believes is concurrent jurisdiction without presenting, to the States themselves, the theory that you hold and why you think it is the correct theory.

Mr. RICHARD. My understanding is that in other States, the States do exercise this jurisdiction without any difficulty. But in any event, even assuming, sir; that there is no State jurisdiction, that there is only Federal jurisdiction, I am suggesting that, to the extent that there is a problem in this area arising from the jurisdictional problems, that existing magistrates, authorities, and what-have-you are flexible enough to address those problems without additional legislation. And that is the point that I was trying to urge, Mr. Chairman.

Senator MELCHER. Well, let me go to your testimony.

On page 11, you say that crimes committed by non-Indians against Indian persons—and these are minor crimes—State courts have jurisdiction over these offenses.

But on page 5, you say that jurisdiction over victimless crimes committed by non-Indians lies with the State unless the crime poses a direct threat to individual Indian or tribal interests. You give as an example reckless driving and disorderly conduct. Then you say, in those cases, Federal jurisdiction may be asserted.

Now, while those statements do not contradict each other, they, of course, bring us back into this morass of confusion where McCann, the county attorney, knows of the crime and wants to see justice rendered but simply cannot get a U.S. attorney to assert jurisdiction.

Mr. **Richard**. Mr. Chairman, we have—because we have heard this complaint before—we have, as I indicated, attempted to establish mechanisms for providing opportunities to air this problem, either on a case-by-case, basis beyond the U.S. attorney level, or as a systemic problem, again, back in Washington.

We have emphasized that in these recently established law enforcement coordinating committees that operate at the State level, that where there are Indian reservations and Indian enforcement issues, that they be addressed in the context of these problems. We have made it clear throughout the entire system that if there is any quarrel with any particular declination by a U.S. attorney, whether it be by the Bureau of Indian Affairs, the tribe, itself, or the State prosecutor, that we are available in Washington to review that judgment and take action if, in our judgment, it is warranted.

So, we have attempted to establish mechanisms to ensure that these kinds of problems at least can be reviewed at levels beyond just the U.S. attorney.

Senator **Melcher**. Well, it is indeed a systemic problem, but it is a large problem, and one on which we do not see any progress being made, unfortunately.

I want to refer to a couple of points in your testimony. You mention that you feel a magistrate ought to be appointed by the court, itself, so he works closely with the court. It seems to me nit-picking, though, to say that if we are going to have a procedure where a special magistrate is appointed by the President and approved by the Senate, that that's too cumbersome.

Justice, I do not think, is on record saying that it is too cumbersome to have the President appoint military officers. They get a promotion or get their commission, and they have to be approved by the Senate. It is done, you know. I do not know how many thousands upon thousands pass through the Senate each year.

Mr. **Richard**. Well, the current magistrate procedure, as we appreciate, does afford the judiciary a flexibility to respond quickly to specific enforcement problems as they emerge. It is this flexibility, if you will, that we were alluding to in terms of cumbersomeness and efficiency.

I would agree with you that it is certainly not our major concern in the context of our concerns over this bill.

Senator **Melcher**. Well, no, it cannot be a major concern. It cannot be a big concern to anybody, and certainly the committee has no problem in considering anything that is recommended. But, I do not know how we could be more straightforward than to copy the usual pattern, that is the method of appointing people to serve in our judiciary as well as many other branches of Government.

The Interior Department seems to think that we can amend current laws that would restrict Federal magistrates from holding hearings in Indian country.

Just what does that statement mean?

Ms. **Elbert**. Mr. Chairman, we were simply indicating that if there are any laws out there that restrict magistrates from holding hearings in Indian country, that they should be amended to give them authority to do so.

I do not know if there are any out there that restrict them.

Senator **Melcher**. I do not think there are, are there?

Mr. **Richard**. Mr. Chairman, our research indicates that there are no laws that would restrict the hearings.

Senator **Melcher**. And, as a matter of fact, you say we have already got the magistrate system and we can use more Federal magistrates but that simply does not answer the problem at all, because I do not know where there are more Federal magistrates appointed for Indian country. Do you, Mr. Richard?

Mr. **Richard**. I am not sure I understand.

Senator **Melcher**. Well, you say that we have the system of Federal magistrates. We have got that authority. I just am not aware of any instance where more Federal magistrates have been appointed to serve in Indian country.

Mr. **Richard**. I am not suggesting they have been. All I was suggesting was, we do believe that there is the authority under existing legislation, if there was a need perceived by the judicial apparatus in the district to take steps now under existing procedures to appoint additional magistrates.

Senator **Melcher**. You can accept my view or not—that is your privilege—but, believe me, the problem does exist, and it simply is not being solved. And that is the effort of this bill—to solve, in a limited way, part of the problem that exists.

Now, James McCann, the county attorney I referred to, testified before this committee when we held field hearings. He is not here today because a trip to Washington to testify again on this bill is a costly matter, both in time and expense. But, indeed, the problem does exist, and this bill, or something like it, would be helpful for many people.

Mr. **Richard**. Well, as I appreciate—my colleague advises me that there is a magistrate in Flagstaff, which is near the Navajo and Hopi Reservations. Again, I can only reflect, sir, my belief that the fact that there are not more magistrates being appointed in this area is to suggest at least that those closest to the scene are not convinced that is a resolution to what is admittedly a law enforcement problem. But I think it is a question of coordination that is needed, better liaison between the operative law enforcement components that has to be developed, and we are just not confident that this approach is responsive to the problem, at least that we perceive.

Senator **Melcher**. One final point. Both of you have testified that you object to having a layperson appointed. It might somewhat dilute, I guess, a protection due the defendant.

As I read that language and I will be specific—in 653(b)—any defendant appearing before a special magistrate may be assisted by a lay spokesman and such assistance shall not be considered the practice of law. Assistance by such spokesman shall not waive the right of the defendant to appointed counsel in any case where he or she is entitled to such appointed counsel.

Now, that does not disturb me as much as it appears to disturb the two of you, because, as I read that, it is clear that the person is a spokesman and that it does not take the place of counsel.

Now, I see the confusion. On line 3, page 6, it says the appointed counsel. It probably should say the appointed spokesman.

I am sure both of you are aware that it might be necessary to have an interpreter. Is that not true?

Mr. RICHARD. We do not view interpreters as being spokespersons for the subject.

Senator MELCHER. But would you be comfortable if it were explained—perhaps putting it in the statute is not significant, anyway—but would you be comfortable if it were made clear that it may be necessary to have an interpreter?

Mr. RICHARD. Certainly. I mean, obviously if a defendant needs an interpreter to function adequately in this kind of thing——

Senator MELCHER. Not only the defendant, but perhaps the jury.

Mr. RICHARD. Obviously, interpreters, in my view, are clearly distinguishable from people who are advocates, if you will.

Senator MELCHER. Both of you are aware that that, indeed, is absolutely essential.

Mr. RICHARD. Yes.

Senator MELCHER. Is that correct?

Mr. RICHARD. In certain instances.

Senator MELCHER. Hazel, is that correct?

Ms. ELBERT. Yes.

Senator MELCHER. Thank you.

Ms. ELBERT. I don't believe we raised concerns about that. We simply mentioned it as being one of the provisions of the bill.

Senator MELCHER. Well, since you did not mention very much else, I would think that you thought it must be very important.

Thank you both for your testimony. We appreciate it.

The next witness is H. Dale Cook, Administrative Office of the U.S. Courts, here in Washington.

Judge Cook, we are pleased to hear from you.

H. DALE COOK, CHIEF JUDGE, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA, ON BEHALF OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, ACCOMPANIED BY MR. DUANE R. LEE, CHIEF, MAGISTRATES DIVISION, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Judge COOK. Mr. Chairman, I have filed a prepared statement and would like to summarize, if I may.

Senator MELCHER. Yes; all of your statement will be a part of the record.

Judge COOK. Thank you, sir.

I am H. Dale Cook. The list of witnesses indicates that I am from the Administrative Office. That is not quite correct. I am not part of, nor do I have any affiliation with, the Administrative Office of the U.S. Courts. I am a sitting U.S. District Judge and I am appearing as a representative of the Judicial Conference of the United States.

I do want to express my personal appreciation and that of the Federal judiciary for the opportunity to testify on S. 1177, the Indian Reservation Special Magistrate and Law Enforcement Act.

I am a U.S. District Judge for the Northern, the Eastern and the Western Districts of Oklahoma, and was so appointed on Decem-

ber 31, 1974, and I became Chief Judge of the Northern District of Oklahoma on February 26, 1979.

I am also a member of the Committee on the Administration of the Federal Magistrates System of the Judicial Conference of the United States, being the representative so appointed by the Chief Justice from the 10th Circuit.

The Judicial Conference realizes that there are problems relating to the enforcement of existing laws on Indian reservations. The Judicial Conference, however, opposes the creation of a new and separate parallel system of special magistrates having limited jurisdiction concurrent with that of the existing U.S. magistrates.

The Conference also opposes the bill's provisions for juries in cases before the special magistrates.

It is the view of the Conference that the problems relating to the enforcement of existing laws on Indian reservations result not from the lack of judicial resources, but from the allocation of law enforcement personnel and from prosecution policies.

Assuming that a need exists for additional magistrates to handle offenses on Indian reservations, there is no justification—at least none has been presented—for establishing a separate tier of magistrates. The Federal Magistrates Act, as it presently exists, provides ample authority for the Judicial Conference of the United States to establish additional U.S. magistrate positions and allocate the positions to handle whatever cases are actually prosecuted and brought before the judiciary.

A number of U.S. magistrates are already authorized to handle cases in and around the reservations and Indian country and already serve at, or near, and in Indian reservations.

The volume of cases brought before the magistrates in Indian country, however, has generally been minimal. In any event, as judicial officers, magistrates do not initiate prosecutions, but decide the cases that are brought before them by the prosecutors.

Any need for additional judicial resources in Indian country that may arise, or may exist, from increased law enforcement and prosecution, could, and would, be accommodated by the existing U.S. Magistrate System.

Accordingly, the creation of an additional tier of special magistrates is unnecessary and is opposed as a matter of policy.

U.S. magistrates are authorized by Judicial Conference of the United States in accordance with the provisions of 28 U.S.C., section 633. In determining the number, the location, and salaries of magistrate positions, the Conference considers the recommendations of the appointing district court, the judicial council of the pertinent circuit, information the Director of the Administrative Office furnishes, and the views offered by law enforcement agencies and any other interested parties.

In surveying requests for additional magistrate positions, the Director of the Administrative Office takes into account local conditions, including the areas and the populations to be served, the transportation and communication facilities available, the amount and distribution of business expected to arise before a magistrate, and any other material factors.

The caseload arising at a particular location, however, is the primary factor which determines the authorization of magistrate positions. If the law enforcement agency comes forward with a showing of what the needs are, the Judicial Conference is willing to establish the necessary magistrate positions to serve those needs.

Now, the bill also requires that the special magistrate maintain a list of eligible jurors in consultation with tribal authorities and county and municipal officials. It provides that only persons who reside within the reservation would be eligible to serve on the jury panels.

Juries in trials before special magistrates would also consist, under the bill, of six persons.

The Judicial Conference opposes the bill's specific provisions for juries in cases before special magistrates for the following reasons: The provisions for the maintenance of separate jury pools by the special magistrate would be costly and, essentially, duplicate the work of the court clerks, or jury commissioners.

Also, restricting the composition of juries to persons who actually reside within the reservation in which the offense is alleged to have been committed may depart from the philosophy of the Jury Selection and Service Act of 1968, which establishes the right to a jury selected from a fair cross-section of the community. That act establishes the judicial district or division as an appropriate vicinage for jury selection.

Requiring the magistrate to compile an independent list of persons eligible or registered to vote in State, local, or tribal elections is inconsistent with present law, 28 U.S.C., section 1863(b)(2), prescribing the use of the local voter registration list or lists of actual voters.

Also, limiting the size of the jury to 6 persons is an unprecendented departure from the traditional practice of 12 jurors, which has governed the trial of criminal cases.

I might, if I may—I come from a State, Oklahoma, which has a sizable Indian population—in reading the bill, it occurred to me that it requires the juries to be selected from reservations. We have no reservations in Oklahoma, so, therefore, under the existing bill, there could be no juries selected. We have lots of Indian country. But that is just an aside.

The need for magistrate positions is directly related to the prosecutorial activities of the U.S. attorneys or their delegates. We have reviewed numerous magistrate positions at or near Indian reservations as part of our regular, and continuing review of magistrate needs in each and every district.

Generally speaking, there has been little change in the number of cases being prosecuted in Indian country. More notably, we have received few, if any, requests for additional magistrate positions within Indian country. Should there be a need for additional magistrate resources, or should information be supplied showing there is a present need, the Judicial Conference and the Administrative Office are ready to move quickly to make the necessary resources available under the Federal Magistrates Act.

It is the view of the Judicial Conference that the types of problems raised should be addressed as matters of law enforcement and prosecution policies rather than the question of judicial resources.

Magistrates are judicial officers and, as such, do not initiate prosecutions; they do not investigate crimes, but decide cases that are brought before them. We believe the existing magistrate system has sufficient flexibility to accommodate any need for additional judicial resources in Indian country or on the reservations that may arise from increased law enforcement and prosecutorial activity, and that, therefore, the creation of a separate, parallel system of magistrates is unnecessary, duplicative, and a waste of taxpayers' dollars.

In addition, Mr. Chairman, if you would permit, I would like to supplement the record with a statement of the cost to establish a full-time magistrate. Assuming that the facilities are present to house and care for them, I might say that to establish a full-time magistrate there is an initial cost the first year of $340,000. The cost for each year thereafter, annual reoccurring cost, is approximately $251,000. So, I know, as a member of the magistrates Committee, in reviewing requests and authorizing new positions we are conscious of the money dollars that are being committed.

I will be happy to answer any questions.

I might also supplement, if I may—I notice that nobody has addressed the question—of court facilities, clerk's office personnel, marshall's office personnel, et cetera, that would be also involved and concerned in the establishment of these additional positions.

I will be pleased to answer any questions, if I could, sir.

[Prepared statement of Judge Cook appears in the appendix.]

Senator MELCHER. Judge Cook, all of your service on the bench has been in Oklahoma?

Judge COOK. I have been assigned a number of times to other jurisdictions. For instance, I have tried a number of cases in Utah. When judicial resources become, for one reason or another, somewhat strained or unavailable, we are assigned within our circuit to assist. But, for all practical purposes, my judicial service has been in Oklahoma.

Senator MELCHER. Well, it might be unfair to ask this rhetorical question, but if your State is like our State—but, in Oklahoma, the crimes we are speaking of obviously have State jurisdiction so, the problem simply does not exist.

Judge COOK. Not all the time, Mr. Chairman.

Senator MELCHER. Then I will ask the rhetorical question. When was the last time you had an assault case before you?

Judge COOK. Our court tried one last week—a murder case.

Senator MELCHER. Assault, where murder did not occur?

Judge COOK. These were assault ending in murder cases. We do have those.

Senator MELCHER. I am sure you have the major crimes.

Judge COOK. We do. I have tried them, also, in Utah.

Senator MELCHER. But we are not speaking of the major crimes.

Judge COOK. I understand that.

Senator MELCHER. The $500,000 you spoke of—I don't know whether that would be the cost or not—that is a very minor item, in thinking about providing justice where justice is not rendered. I think you would agree to that.

Judge COOK. I would definitely agree to it. My point is that I am trying to make, is that the present system is flexible enough to place judicial personnel wherever the need exists, and our committee is in constant review of these positions.

Senator MELCHER. All right, now, I am glad to hear you say that, Judge, but I wish you would fire them up a little bit. We have been asking for a special magistrate on the Fort Peck Reservation for years. I have not checked back to see it they got one in the last year or so but we will have a witness from Fort Peck.

Judge COOK. Im not familiar off-hand with the numbers of cases that are arising before the magistrates there.

Senator MELCHER. I didn't think a magistrate has been assigned there yet. The fact is, there is not any article I court, is there, on any Indian reservations?

Judge COOK. Are you speaking of where they hold the court?

Senator MELCHER. Yes.

Judge COOK. I would not—I cannot answer that.

Senator MELCHER. Think of Judge Battin in Billings, whom you probably know.

Judge COOK. Yes; I have met him.

Senator MELCHER. Good. Do you know whether Judge Battin's docket is loaded up with assault cases that occurred in these reservations? I am just naming assaults, because that is what James McCann, the county attorney from Roosevelt County by the Fort Peck Reservation, referred to, just assault cases. Do you know whether Judge Battin's docket is loaded up with assault cases?

Judge COOK. No; I do not think it is.

Senator MELCHER. No; it is not.

Judge COOK. Mr. Chairman, the point I would like to emphasize is, that if additional magistrates are needed to handle cases that may be brought by additional prosecutorial policies or personnel, we, the Judicial Conference, can, and I firmly believe will, move rapidly to get personnel in those places where the need may exist.

Senator MELCHER. Let me just briefly explain what I understand to be one of the major problems and that is distance. In order to have a case tried, you need witnesses in many cases they would have to travel a couple of hundred miles. That simply does not happen often, so the case does not go forward. It is just not brought for trial.

Judge COOK. Mr. Chairman, I understand that problem. I have been in the Eastern District of Oklahoma. We have a district in which I suppose you go 250 miles from our chief place of court to the far-distant areas of that district, and it does present problems. That is a matter not of judicial resources as it is of court facilities, of building courtrooms to hold the courts.

Now, we have some court facilities that had been built in times past, when transportation was not quite so good in the Oklahoma area. As a matter of fact, we have been requested in many instances to close those facilities because of the expense of maintaining them. But that is a matter of court facilities, and we are going, and the magistrates can, and will, go wherever the need is. If transportation is the problem, then the magistrate should be in that area.

But there is not, as I would suggest to you, the necessity of a special——

Senator MELCHER. Now wait 1 minute. That magistrate is not going to try that case, is he?

Judge COOK. As Mr. Lee, who is the Chief of the Magistrates Division of the Administrative Office, has pointed out, you have at Wolf Point a magistrate on the reservation.

Senator MELCHER. That is interesting. We finally got one assigned there.

Mr. LEE. You have had one for years, sir.

Senator MELCHER. Pardon me?

Judge COOK. Mr. Lee says he has been there for many years. You have another one in Glasgow that is within approximately 15 miles, I understand, of the reservation.

Senator MELCHER. Well, we are glad they are there on paper. I hope they are there in the flesh.

Judge COOK. Well, we hope so, too, Mr. Chairman.

Senator MELCHER. But nevertheless, I do want to understand this point: there are no article I courts? You are saying that the magistrate can try the case?

Judge COOK. The misdemeanor cases, if the parties agree, can be tried by the magistrates. Now, your bill has that provision which takes from the defendant that option, and under that provision the magistrate would try the case.

Senator MELCHER. I just want to understand that this actually happens. With or without a jury?

Judge COOK. Yes; with or without, whichever; if they have the right to jury, they have the right to jury, and they cannot be denied.

Senator MELCHER. And how often does that happen?

Judge COOK. As often as a defendant requests it, and they must specifically waive it before it could be——

Senator MELCHER. I'm asking, since it is a matter of record, how often?

Judge COOK. I cannot answer that off-hand, but we can try to find out how many jury trials are held by magistrates, and I assume you mean misdemeanor, because they also try many civil jury trials.

Senator MELCHER. I do mean misdemeanors.

Judge COOK. All right, Fine. Yes, we may supplement the record. I am sure the Administrative Office has information on how many jury trials are held by U.S. magistrates around the country.

Senator MELCHER. Well, I don't want to belabor this but I think you heard me Judge read three paragraphs of a letter from James McCann the county attorney at Wolf Point, on the Fort Peck Reservation.

Judge COOK. I did, Mr. Chairman, and I appreciate his concern.

Senator MELCHER. He is not voicing his concern because everything is taken care of; he is voicing his concern because things are not being taken care of.

Judge COOK. I understand that, and I think the main thing, Mr. Chairman, is that—I think his concern is to the fact they are not being brought for prosecution, and not a concern that there is not judicial personnel to handle those being brought.

Senator MELCHER. Well, we are going to have a witness from the Fort Peck Reservation. He can answer our questions as to whether or not the magistrate, indeed, is present in the flesh and what the resolutions of the problems there are.

I cannot quarrel with whether the Conference has the authority to appoint more magistrates. The facts are that we have problems. We are not creating problems; we are just responding to problems.

Judge COOK. I understand that, Mr. Chairman.

Senator MELCHER. And for the last 6 years, we have been looking seriously at how to make such a response. It seems apparent that the problem is viewed by the Justice Department and by the Judicial Conference to be of such low priority that there simply is not much need to do anything at all.

We find that view does not mesh with the facts. There is a need to do something else. The point is, what do we do, and how do we do it.

I do not know, Judge, whether you were at that Judicial Conference in Sun Valley.

Judge COOK. I was at Sun Valley to a Judicial Conference, yes, sir.

Senator MELCHER. In August?

Judge COOK. No, not this year; it has been some years ago, when the tenth circuit met.

Senator MELCHER. Well, I happened to be there this past August, when the Judicial Conference was there. I daresay that this problem about how to have better enforcement of the laws and justice for people on reservations, was not a matter of discussion.

It is that low a priority, and I have to say it is a pretty low priority in Congress. But, nevertheless, the problems exist and are not being responded to. You say, well, we have got a good enough magistrate system. We would not be holding this meeting now if it were working. It simply is not working on reservations.

I appreciate your testimony. I appreciate anything that can be provided to us by way of documentation by the Magistrates Division. Shall I call it that?

Mr. LEE. Yes; Magistrates Division.

Senator MELCHER. We would appreciate that very much.

Thank you.

Judge COOK. Thank you very much for the opportunity of appearing.

[Material to be supplied appears in the appendix.]

Senator MELCHER. Our next witness will be Caleb Shields, executive board member, Fort Peck Tribes, Poplar, MA. Proceed, Caleb. Welcome to the committee.

STATEMENT OF CALEB SHIELDS, MEMBER, FORT PECK TRIBAL EXECUTIVE BOARD, POPLAR, MT

Mr. SHIELDS. Thank you, Senator.

My name is Caleb Shields, representing the Fort Peck Assiniboine and Sioux Tribes.

Mr. Chairman, I have testified in support of this and similar bills like this in the last 6 years, and we feel that this bill would be very beneficial to our tribe, and I would like to see it enacted.

We suggest a change in the bill that we think would help attract more tribal support. A few tribes, unlike Fort Peck, are satisfied with the system of Federal prosecutions on the reservations and, therefore would not support mandatory use of special magistrates.

We suggest that the bill be amended to provide that tribes can opt not to have the services of a special magistrate on the reservations. This should not be a controversial amendment as it will save money.

I was very interested in hearing some of the testimony here this morning, and I think over the years of cases going unpunished or unprosecuted at the reservation level has led to only an increase of more and more crimes.

Some of the comments that were made, Senator, have to do with: is there, or is there not, a Federal magistrate in our area? I understand there is a part-time magistrate, but the Federal magistrates have to have the consent of that individual to be heard in his court.

Consequently, that individual, if it was a non-Indian, would not give his consent to be heard, knowing full well that he would then have to go to Federal court in Billings, which is 310 miles from Poplar.

The non-Indian population of Fort Peck, knowing that in 90 percent of the time the U.S. attorney and the Federal court will not hear the cases, nothing will be done.

Senator **Melcher**. I guess that answers the question, then. If I am the accused and brought before the part-time magistrate, I can just say I do not want to have anything to do with you. That puts me before Judge Battin or Judge Jameson, or somebody in Great Falls, and I am fairly confident that, because my crime is a minor crime, it will probably never be prosecuted.

Mr. **Shields**. That is correct, Mr. Chairman.

The problem also lies not only with the prosecution but the investigative arm of enforcement in crimes against Indians. Say, for instance, the FBI, who are in Glasgow, depending on which end of the reservation they have to travel, it is quite a distance, the response time is long, and their investigation, as it is gotten and presented, plays a big part in whether or not the U.S. attorney is going to prosecute or not.

In the bill, there is mention of a prosecuting attorney to accompany a special magistrate. We feel that is an important provision in the bill. At the same time, we also feel that maybe additional U.S. attorneys, especially in the Billings area, who would have more time to prosecute these cases, may resolve a lot of the controversy that exists on our reservation.

Some of the problems that we have, Senator, as an example, the problems that are causing this is that a non-Indian, or group of non-Indians, would assault an Indian or group of Indians. The Indians would file a complaint to the magistrate, and he would say, I cannot do anything, I do not have the consent to prosecute. So, the next thing that happens, a group of Indians would get together, and they will go attack the non-Indians who attacked them previously. And it goes back and forth. You know, you get a bigger and bigger group.

At various times, it gets more controversy, there may be a group of Indians and non-Indians that attack another group of Indians and non-Indians, and then only the Indians would be prosecuted if there is a complaint filed against them in tribal court by the non-Indians.

The non-Indians are getting away scot-free from a lot of the assault cases in that respect.

We at Fort Peck, especially at the tribal council level and the community organization levels, have been, in recent years, taking strong stands for good, effective law enforcement. We want those who are convicted of crimes to be punished. Even with the Indian Civil Rights Act in place in our tribal courts, our code is in full compliance with the Indian Civil Rights Act, and the rights of people who are charged with crimes are fully protected in that respect.

Too many times, the rights of the victims are totally ignored in not only assault cases, but like burglary cases, and all that. The victims are going through a huge expense and frustration; that too many of the assault cases are not being presented to court properly, and not being prosecuted, and I think the other part of the bill that we are interested in, is the jury system of a cross-section of the community, if there is a special magistrate appointed.

I believe that if it was left up to individual tribes, for those tribes that wished to have magistrates, you will have requests from the tribes like our tribe, but I understand that those tribes who are opposed to special magistrates would leave it up to their particular tribal governments, but at least in Fort Peck, over the number of years, as I stated, have been strong for good law enforcement.

In fact, the statistics showed that up until 2 years ago we had a real high, high rate of homicides, but the community, the Indian community, has taken a strong position of punishment for those who are convicted. The homicide rate went to practically zero in the last couple years.

We were up to an alarming statistic. It was getting up to an average of two homicides a month on the reservation, but in the last year or so, it has been practically zero on the homicides.

There are still these assaults, and this is where the community people want effective law enforcement, and we feel that a special magistrate would be effective to provide better enforcement on the reservation.

[Prepared statement of Mr. Shields appears in the appendix.]

Senator MELCHER. Thank you, Caleb. I guess we should acknowledge that Fort Peck, indeed, is closer to Great Falls, so perhaps cases arising in Fort Peck would logically fall in Judge Hatfield's court in Great Falls.

Mr. SHIELDS. The majority of them go into Billings.

Senator MELCHER. Still going to Billings?

Mr. SHIELDS. Yes.

Senator MELCHER. I think your point about making it optional, whether a tribe wants a magistrate, is a very good point. The presence of a Federal magistrate, especially if we are going to give him special authority, or more authority than would be available to him now, is only going to work well if it works well with the tribe, itself. So, I think that is a very significant point.

I am quite surprised at some of the estimates for cost. In fact, I don't understand them. I think I must have misunderstood what some of the witnesses have said about the potential cost. In one instance, I think one of the witnesses indicated there would be a Federal magistrate on every reservation.

From a practical standpoint, I do not believe that is desirable, nor does the bill seek that. But the bill seeks to have a magistrate present as needed on reservations, and that means that some reservations, of course, would probably have none. I believe it is fair to say that you could read the bill to mean that every reservation would have one, but that is not our intent.

Very small reservations certainly do not need somebody sitting there all the time, and we do not believe the bill should be interpreted that way. It will have to be clarified. I think perhaps one magistrate could cover several reservations where they are very small.

And so, the cost is not what we are looking at. It is whether or not this would be a practical means of providing justice on a reservation. On that basis, the cost is not the significant point.

The significant point is whether or not it would serve to improve justice on the Indian reservation. I suspect that we will take very seriously your recommendation to allow tribal decisions on particular reservations on whether they even wanted the special magistrate system.

So, that is a very worthwhile point.

Thank you very much, Caleb.

Mr. SHIELDS. Mr. Chairman, I would ask that the written statement of the Fort Peck Tribes be submitted for the record.

Senator MELCHER. Yes; it will be made a part of the record in total.

Thank you very much, Caleb.

Our next witness is Gerald Anton, president of the Salt River Pima-Maricopa Indian Community Council, from Scottsdale, AZ, accompanied by Richard Wilks, legal counsel. You may proceed.

STATEMENT OF GERALD ANTON, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, ACCOMPANIED BY RICHARD WILKS, LEGAL COUNSEL

Mr. ANTON. Mr. Chairman, I am Gerald Anton, president of the Salt River Indian Community. On behalf of the community and the community council, I wish to thank you for asking us here today to testify in support of S. 1177.

The Salt River Pima-Maricopa Indian Community recognizes the urgent need to provide a reliable system to adjudicate criminal offenses on Indian reservations. The void left by the *Oliphant* decision has had an adverse effect on Indian people across the country. S. 1177 would, if enacted and fully implemented, construct a criminal law safety net.

On July 26, 1983, the Salt River Pima-Maricopa Indian Community presented a memorandum to the members of the Arizona congressional delegation regarding criminal jurisdiction over misdemeanor offenses by non-Indians within Indian country.

The dialog that the memorandum engendered led the community to believe that such legislation ought to be addressed specifically to individual tribes in response to specific circumstances and in cooperation with neighboring non-Indian communities.

S. 2564 was introduced to deal solely with criminal jurisdiction within the Salt River Pima-Maricopa Indian Community.

We believe that Indian tribes ought to be able, in appropriate circumstances, to fully exercise their governmental authority to enforce their criminal laws.

For our community, S. 2564 is the better solution to the problem that both bills address. S. 1177 recognizes the possibility that different solutions will work in different tribal situations. So that section 651(a) speaks of the President appointing magistrates as may be necessary.

The Salt River Pima-Maricopa Indian Community's position in regard to S. 2564 is supported by each of the mayors of each of the cities in the vicinity of the community, by the local county supervisor, and by the Governor and attorney general of Arizona.

It is made necessary by the location of the Salt River Pima-Maricopa Indian Community within the Phoenix metropolitan area and the presence of residents of our neighboring cities as commuters traveling through the community and tourists using recreational facilities and opportunities.

The confluence of the need and the unqualified support of local, State and Federal officials compels S. 2564 as the solution for our community. The existence of a need for adequate law enforcement elsewhere in Indian country should engender support for the more general benefits of S. 1177.

Our concern is that the enactment of S. 1177 not be the only solution for the differing concerns of different Indian communities and tribes located in different places and functioning in different circumstances.

So, that is our testimony here this morning.

[Prepared statement of Mr. Anton appears in the appendix.]

Senator MELCHER. Gerald, first of all, thank you for your testimony. Enlighten me, is there a Salt River Reservation?

Mr. ANTON. Yes; there is.

Senator MELCHER. How large is it?

Mr. ANTON. It is 75 square miles, about 52,000 acres in the midst of about a population of close to 2 million.

Senator MELCHER. You are surrounded.

Mr. ANTON. Right.

Senator MELCHER. Let's see now. Are you upriver from Phoenix, or not?

Mr. ANTON. Are we what?

Senator MELCHER. Upriver.

Mr. ANTON. Yes.

Senator MELCHER. Up the Salt River?

Mr. ANTON. Yes.

Senator MELCHER. Scottsdale is adjacent to what other communities?

Mr. ANTON. It borders on our western edge. We have a road there that half of it is in our community, and the other half is in Scottsdale—Pima Road.

Senator MELCHER. All right. Then Scottsdale is next to what?

Mr. ANTON. It is right next to Phoenix.

Senator MELCHER. Right next to Phoenix.

Mr. ANTON. East of Phoenix.

Senator MELCHER. Yes.

Mr. ANTON. You cannot tell when you leave Phoenix and Scottsdale, except that there is a sign that says you are now in Scottsdale.

Senator MELCHER. Yes; all right.

I want to congratulate you and all of the Pima and Maricopa Indian Community for developing the bill you did, S. 2564. I am sure that those efforts did not come easily. I mean, you did not get the results you did, the support of State officials of Arizona, and the county officials, and the city of Phoenix, without a great deal of effort.

As I stated earlier, some of us have only one concern, and that is, is this precedent the only answer to the *Oliphant* case?

Mr. ANTON. See, prior to *Oliphant*, Mr. Chairman, we were exercising that jurisdiction over non-Indians through our court system——

Senator MELCHER. Without any problem.

Mr. ANTON. Without any problem. In fact, we were complimented in many instances by those non-Indians who saw an efficient operations, saying that if we went to the city of Phoenix, we do not get that kind of courtesy and services that we got here.

So, it would have that kind of support from our non-Indian neighbors, and it is key in our situation because we are looking at law enforcement, and we work closely with our neighbors, and that is why we got that support. Plus, our police officers are all tribal policemen, and they are all trained in the State Law Enforcement Academy, so they have the same credentials that the highway patrol for the State, the county, and the cities have.

In fact, we provide a lot of training at our facilities for those people, including the FBI, and we give those training to law enforcement agencies, so we have the respect from those law enforcement agencies, and, of course, we were forced into that because of the situation we are in.

So, we have been fairly successful in doing that, and we have made some commitments from the tribe to put a lot of dollars of our own money so that we have that viability, that credibility, that goes with addressing that issue of law enforcement.

Senator MELCHER. You presented a memorandum to the members of the Arizona congressional delegation. Would you explain that a little more thoroughly? Was that memorandum a formal document?

Mr. ANTON. Well, the tribal council was concerned, because of the 80,000-some-odd people that come across our community daily, and we had no control. We were looking for the safety of people coming through there, as well as our people. So early on, we discussed at the tribal council and saw a need to seek some kind of jurisdiction so that we had control and law and order.

So we posed to our congressional delegations, stating, well, this is our concern; how do we go about this to meet the needs of our community, given that *Oliphant* has taken that away from us. So, the suggestion that they gave us was that we needed to go back to work with our neighboring people, our communities, and with the State, to get support on that concept. And that work went on for 2 years, and we did a lot of educating to people who come to the community, and got that support. And that is the memorandum that we are talking about. And we kept them informed on our progress and who we met with and followed up.

As a result, the bill was introduced.

Senator **MELCHER**. The memorandum that you refer to states that a problem exists and states the interest of the Pima-Maricopa Community. But it goes beyond that. I am inquiring, does that memorandum go beyond indicating the support of the Governor and the attorney general and the municipalities that surround the reservation?

Is a type of formal agreement, I guess is what I am asking?

Mr. **ANTON**. Yes; in that the letters are attached to that bill and report of what we were doing.

Senator **MELCHER**. I see. From these——

Mr. **ANTON**. From these entities, the attorney general's office, the Governor, the county board of supervisors, and all the cities surrounding us.

Senator **MELCHER**. That does, indeed, represent an unusual and welcome agreement of jurisdiction and I very much congratulate you.

Thank you very much for your testimony.

Mr. **ANTON**. Thank you.

Senator **MELCHER**. We will now hear from Robert Fast Horse, Chief Judge of the Oglala Sioux Tribe, Pine Ridge.

STATEMENT OF ROBERT FAST HORSE, CHIEF JUDGE, OGLALA SIOUX TRIBAL COURT, PINE RIDGE INDIAN RESERVATION, PINE RIDGE, SD

Judge **FAST HORSE**. Thank you for this opportunity to testify on this bill.

In speaking with my fellow tribesman, Mr. Caleb Shields, from Fort Peck, he drew my attention to the fact that the Federal magistrate bill may not cover the Major Crimes Act. What was triggered in discussing this bill with my Law and Order Committee, which is a committee of the Oglala Tribal Council, is that the bill speaks about Federal offenses, and when we talk about Federal offenses on our reservation, it triggers in our mind that these are major crimes. So, I am not clear as to that point in the bill.

If it does not cover the Major Crimes Act, if those are going to be referred on to the district court level, then that would clarify the issue in our minds.

As I understand it, it is also a bill designed to overcome the disparity and the gaps that the *Oliphant* decision caused in Indian country. If it does cover the Major Crimes Act, we see, and we feel, some anxiety concerning the prosecution of Indian people in our reservation.

Already in the State of South Dakota, the Indian population is 6.5 percent, and yet our prison population is 22.5 percent, far above the norm.

In fact, if we want to speak about a parade of horribles concerning prosecution of Indian people, on the reservation and in the State of South Dakota, recently an elderly Indian man was sentenced to 5 years in the State penitentiary for stealing a can of

Beanie-Weenies because he was hungry, and we see that type of rate of conviction, at least in the State of South Dakota.

We do suggest other alternatives to closing the gap. That would be by way of cooperative agreements between the State of South Dakota and the Oglala Sioux Tribe in a memorandum of understanding between U.S. attorney generals and tribal prosecutors.

We have suggested this in the past, and we have met with the FBI and the attorney generals, along with our public safety commission, my fellow judges, and our tribal prosecutors, and we are in the process of working out some type of agreement at this point to establish a semblance of a prosecutorial chain of command in which it would be clear to our law enforcement people and to our prosecutors as to who was going to take which case.

I think that another point that has to be brought out is, many of our constitutions and bylaws which we are governed by allows for jurisdiction of non-Indians if they consent to our jurisdiction, and many times they do, despite the *Oliphant* decision. Our constitution and bylaws have never been changed.

The only way it can be changed is if two-thirds of our tribal council or if our people, in a referendum vote, repeal, or modify, or amend their constitution and bylaws.

So, many times these are domestic problems entirely, in which our people would have to act, and I concur with Mr. Shields' recommendation that these things be optional to Indian tribes.

All too many times, Federal Indian policy emanates from the Washington, DC level. It does not take into account the different situations on many reservations. The Oglala Sioux Tribe represents the second largest geographical population size in the United States, and we are much different than the Suquamish Tribe in the State of Washington, in which the *Oliphant* decision was rendered from.

Many times, Federal policy does not account for the differences of legal standing. As the Chief Judge for the Northern District of Oklahoma stated, many times there are reservations that are small in size and nonexistent, but have large Indian populations.

I think that my written statement will already be in the record, and I can answer any questions that you might have.

[Prepared statement of Judge Fast Horse appears in the appendix.]

Senator **MELCHER**. Well, Judge Fast Horse, first of all, the major crimes are not covered by the magistrate proposal at all.

Judge **FAST HORSE**. I think that they would have to be specifically mentioned in the bill, as it does cause some confusion among tribesmen.

Senator **MELCHER**. Well, it very definitely is mentioned specifically in the bill in terms of what the authority of the magistrate would be and what purpose the special magistrate would serve. The bill would grant greater authority to a special magistrate than is now in the current law but the additional authority in no way touches upon the major crimes at all.

What did you make, a memorandum of understanding?

Judge **FAST HORSE**. Yes; between the U.S. Attorney General and the tribal prosecutor as to which cases will be handled by whom.

There is a problem that exists that you have mentioned and that we are concerned about, and that is the rate of declinations by the U.S. Attorney General and the waiting period between the declination and informing tribal prosecutors that they have declined on certain cases which very well could have been prosecuted in tribal court.

Senator MELCHER. Going back to testimony received in 1980 on behalf of the Oglala Sioux at a field hearing in Billings on a previous bill similar to this one, Gerald One Feather, director of the public safety commission for the tribe at that time, stated that they were looking for a clarification of the same point you are raising now. So, we have not made too much progress in the past 6 years, have we?

Judge FAST HORSE. Well, we are at the point of realistically drafting those memorandums of understanding.

Senator MELCHER. Will they be concurred in by the Department of Justice? You hope?

Judge FAST HORSE. This was a recent meeting between the U.S. Attorney General, Philip Hogan, the head of the FBI Division from Minneapolis, and Mr. One Feather was also present at that meeting.

Senator MELCHER. So, you think you have got the foundation of the formal agreement now?

Judge FAST HORSE. I believe so, at this point.

Senator MELCHER. Congratulations.

We would like one thing to be clear.

Does your court assert jurisdiction over Indians who are not members of the Oglala Sioux Tribe?

Judge FAST HORSE. If they are members of other federally recognized tribes, yes, we do.

Senator MELCHER. That would be all Indians on Pine Ridge, probably?

Judge FAST HORSE. Virtually, yes.

Senator MELCHER. That has never been challenged, has it?

Judge FAST HORSE. Not to my recollection. Of course, I have only been appointed chief judge for 2 years now, and I have 2 years left on my term. Not during my appointment has it been challenged.

Senator MELCHER. I think it has been a rather open question after Oliphant, and I was just curious whether it has ever been challenged. We do not know that it has.

Judge FAST HORSE. It is my understanding in the ninth circuit, the appellate court division held that a certain tribe did not have jurisdiction——

Senator MELCHER. Did not have?

Judge FAST HORSE. Did not have jurisdiction over nonmember Indians on the reservation who were members of federally recognized tribes.

Senator MELCHER. That seems to be consistent with the *Oliphant* decision, so it leaves another gap, part of which we would like to close here.

Judge FAST HORSE. I would also like to emphasize, Mr. Chairman, that in the event that the bill is passed, we would recommend Indian preference in appointment of the Federal magistrate, that he be an Indian, preferably a member of the tribe in which they are serving, that the U.S. Attorney General, assistant U.S. Attorney General, also be American Indian, and the staff. I believe that this is allowed through our current Federal Indian preference policies in hiring.

Senator **Melcher**. Well, frankly, it is one of the reasons why we thought the appointments ought to be made by the President, because it establishes policy at a very high level. That is one of the things that obviously ought to be considered by an appointment at a presidential level.

All right. Thank you very much, Judge Fast Horse, for your testimony. We appreciate it.

Judge **Fast Horse**. Thank you.

Senator **Melcher**. We would like to call the last two witnesses together, Suzan Shown Harjo, executive director, National Congress of Americans Indians, and Raymond C. Field, executive director of the National Tribal Chairmen's Association.

Please proceed. I believe Suzan first.

STATEMENT OF SUZAN SHOWN HARJO, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Ms. **Harjo**. Thank you, Senator.

You have our prepared statement, and the only thing that I would add to that is to say that we have heard today that everyone going in the same direction, which is toward tailormade specific kinds of jurisdictional agreements rather than an omnibus approach. In this area, as in many areas, but I think particularly this area, we do need to go toward something that is more specific to the community of interest, as well as to the things that are usually ignored by non-Indians in law enforcement dealing with Indians, and that is the cultural appropriateness, the traditions of the tribe, and the underlying law that exists, whether or not that law is codified or documented.

We are working with Representative John Conyers in the House to increase the jurisdictional authorities in this area, and, at the very least, we would like the criminal penalties, the punishing power, raised from $500 and a limited time of 6 months in jail to 1 year, and $1,000. Even that, we feel, is insufficient, but perhaps that is something that is attainable at this time.

It was very difficult, immediately following the *Oliphant* decision, for the people who worked at Interior, including myself at that time, to convince the people who worked at the Department of Justice that the gap left by *Oliphant* should be resolved by applying the *McBratney* rule, and that does apply to the community of interest in that Indian offenses should be handled tribally, under tribal jurisdiction, and that that was not a problem. However, they were inclined to go in another direction. And the reason they were is something similar to what we hear stated even today, and that has been a good many years ago, and that is that the tribal and BIA officials are not well trained and are not professional enough.

We did a little study in the Interior Department at that time, a survey of all of the BIA law enforcement offices with a questionnarie to all the tribes, and found that the level of training was the same as that or comparable to that for the FBI, if not through some of the same institutions.

I think that if we could focus on using the existing systems to the best advantage, beginning with sensitivity training to direct requirements that they go out and prosecute, and accept reports directly from tribal law enforcement entities and directly from the BIA law enforcement entities, I think that would help the problem. And, if we could put more money into shoring up the tribal justice systems that exist, rather than continually overlayering with an outside presence, that we will have done something to the good.

The centuries of colonialism have created many problems, as you are well aware, for our people, and as long as we create outside systems, we will not shore up our infrastructure within the tribes in this and many areas, political areas as well, as long as there is an outside entity to run to.

I think this bill is a continuation of that kind of approach and that we should not continue in that direction.

I would be very pleased to make available whatever materials I have to your staff to review some of the history of the *Oliphant* discussions that led to the decision to apply the *McBratney* rule.

Also, I think it would be well to look at the survey that was done at that time of the law enforcement agencies that really removed all of the Justice Department arguments about why they could not accept investigations directly from the tribal and BIA officials. That is why some of the U.S. attorneys do not prosecute.

But, it goes beyond that. There is cultural insensitivity. The one that struck me the most was an FBI agent and U.S. attorney who decided that they just did not believe that a particular Indian woman had been raped because she was laughing while she was telling the story of having been raped. But, that was how, in her tribe, they dealt with that sort of thing. That was a culturally appropriate response, but it led to not prosecuting.

I think that it is not just enough to say that we need an Indian person to handle some of these matters. Say, if there were a requirement in your bill that the magistrate be an Indian, that person really has to know the meaning and reasons for occurrences in that particular Indian nation, and it is not just enought to be genetically Indian in this instance.

There is cultural sensitivity that needs to apply, and as to the best that we can, to remove any barriers that stand in the way of tribes pursuing life as they would like.

Thank you very much.

[Prepared statement of Ms. Harjo appears in the appendix.]

Senator **Melcher**. Thank you, Suzan.

Mr. Field.

STATEMENT OF RAY FIELD, EXECUTIVE DIRECTOR, NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Mr. **Field**. Thank you, Senator.

I am prepared to offer today the National Tribal Chairmen's Association recommendations for your consideration.

There are serious administration-of-justice problems in Indian country, particularly since *Oliphant*.

The U.S. attorneys and the Federal Bureau of Investigation have heavy caseloads and resulting priorities, and, in many instances, adverse attitudes toward Indian people, which cause neglect of prosecution of offenses by non-Indians in many areas, in the many scattered reservations throughout the United States.

We feel that this bill does not, however, provide specifically that tribal police officers may present evidence at arraignment or preliminary hearings, for example. We understand that the National Park Service officers are doing this in some instances and, at least in one case, the constitutionality of that case has been upheld.

Apparently, however, this is done through some agreement with the magistrate, the U.S. attorneys, and the National Park Service. If this is to be done before the magistrates in Indian country, as the bill now stands, such an arrangement would be dependent upon an agreement worked out with the magistrate, the magistrate attorney, and the local tribal and Bureau police.

If it is desirable for the local police to present evidence in lieu of the U.S. attorney at the trial of minor offenses, that, too, would have to be worked out under the present bill through an agreement. We believe the constitutional problems would increase if the local police presented evidence in lieu of the U.S. attorney at the trial stage.

Another way in which the presentment of evidence is a problem in Indian country is the presenting of evidence by tribal and Bureau police, even when the U.S. attorney participates in the arraignment, the preliminary hearings, and the trials of that case.

At any one of those stages, but particularly at the trial stage, many U.S. attorneys are reluctant to deal with and to accept presentment of evidence from tribal and Bureau police.

In some areas, agreements have been worked out so that U.S. attorneys do accept some presentments from tribal and Bureau police. Phoenix is one of those areas. S. 1177 does not deal specifically with the reluctance of U.S. attorneys to accept evidence from those local police.

If the magistrates bill is enacted, we recommend that it include specific provisions allowing the presentment of evidence at the arraignment of tribal and Bureau police officers.

We recommend inclusion of a provision which would preclude the refusal by a U.S. attorney to accept evidence presented by tribal police at the arraignment, preliminary hearing, and trail stages, based solely on the fact that the evidence is presented by tribal police.

This problem of presentment of evidence is a very technical one which deserves further analysis by experienced criminal lawyers, police officers, and magistrates.

In reviewing previous hearing records and talking with employees and former employees of the Bureau of Indian Affairs in the Department of Interior, we identify a serious lack of specificity in the statement of the problem.

Naturally, any effort to address the problem in the bill should be made only after a thorough study of the problem and consultation with Indian tribes and knowledgeable and experienced individuals.

We recommend, Senator, that a technical study of this issue be made.

We are concerned that implicit in the concept of the magistrate bill is the assumption that tribal courts are incapable and probably politically unacceptable to handle jurisdiction of offenses by non-Indians on Indian reservations.

Tribal courts and police are, in many instances, both competent and politically acceptable to local non-Indians. We do not believe that the political unacceptability of tribal governmental institutions is an acceptable basis for denying tribes jurisdiction over non-Indians.

In addition, the American Indian Policy Review Commission, in 1977, identified misguided and unsuccessful Federal policy resulting from congressional efforts to deal with Indian problems in one monolothic piece of legislation.

Certaintly the General Allotment Act and Public Law 83-280 are examples.

The Indian Child Welfare Act, on the other hand, has been successful in that it has flexible jurisdictional provisions which do not require, but rather authorize, tribes to elect to retrocede all or partial jurisdiction over Indian child custody in Public Law 83-280 States and authorize tribes and States to negotiate agreements for a specified allocation of jurisdiction between them.

It is a flexible approach that we recommend to you today. We would like for the bill to contain a provision authorizing the placement of a magistrate to serve each Indian reservation and are of Indian country upon the request of the appropriate tribal government.

We recommend that, in addition, the bill contain a provision which would authorize jurisdiction over non-Indians by tribes upon meeting qualifying criteria.

We are concerned that wholesale establishment of magistrates courts with jurisdiction over offenses on Indian reservations will undermine the ability of tribes ever to legislatively regain criminal jurisdiction over non-Indians.

In this era of reduced Federal spending, magistrates courts would compete for scarce Federal dollars with tribal courts.

There is one particular jurisdictional matter that we would like to bring to your attention. Under the General Crimes Act, Federal courts do have jurisdiction over an Indian who commits an offense against a non-Indian, and who has not yet been punished by the tribe.

Theoretically, at least, the Federal courts have jurisdiction over a victimless crime by an Indian who has not been punished by the tribe. If a magistrates bill is enacted, we recommend the inclusion of a procedure to ensure that Indian defendants are not prosecuted in magistrates courts until the tribe has declined prosecution. This will prevent the possibility of an overly aggressive assistant U.S. attoney trying to beat the tribe in the race to the courthouse.

No matter how well-intentioned the appointment of a special magistrate to Indian reservations, and no matter how great the need for improved administration of justice on Indian reservations, the appointment of special magistrates to serve Indian country is implicitly an intrustion into tribal self-government.

Granted, the need arises from the Supreme Court's decision in *Oliphant,* and over that decision we have no control.

We do have control over the response from the resulting need.

We have discussed the flexibility approach. In addition, we recommend that the appointment by the President of a special magistrate be made from a list of qualified candidates compiled and submitted to the President by Indian tribal governments with jurisdiction over that particular section of Indian country, and we recommend that preference by accorded to qualified Indian candidates.

Finally, we recomend that the appointment of assistant U.S. attorneys, whose primary responsibilities will be the prosecution of crimes and offenses before the special magistrates be made by the Attorney General from a list of qualified candidates compiled by and submitted to the Attorney General by the Indian tribal government with jurisdiction over that particular section of Indian country, and that preference, Indian preference, be accorded to qualified Indian candidates.

That concludes my statement, Senator. I will be pleased to respond to any questions you may have.

[Prepared statement of Mr. Field appears in the appendix.]

Senator Melcher. We confess that we do not know the limitations or restrictions of arresting officers' presentation of evidence under the special magistrate system. We only make that confession because you raised the point. You raised it very convincingly. So there is doubt under the special magistrates system about the ability, of arresting police officers to present evidence.

That would be a very serious flaw in our concept, because if the magistrate cannot accept evidence from the arresting police officers and the investigating police officers, we do not think we have much going here.

We are very grateful to you for raising that point. We will, indeed, seek the cooperation of the Bureau of Indian Affairs and the Justice Department to advise us on that situation and to make recommendations for this bill on that very point.

We will not have much going if a Federal magistrate under this bill cannot accept evidence. That evidence will not be valid in dealing with minor crimes. Our problem is getting the U.S. attorney to look at the case.

Mr. Field. True.

Senator Melcher. That is a very important point we would like to solve, that lack of presence of the U.S. attorney to collect the evidence, and, therefore, to be able to present it in a Federal district court.

We have two problems: Timely investigation is number one and, number two, is getting anything before the Federal court on these minor crimes.

So, our solution to that was that a special magistrate would have authority to hear those cases, taking that load off of the Federal district court so justice could be rendered.

We will not be rendering much justice if the collection of evidence, or the actual investigation, could not be done promptly and then presented as evidence to the special magistrate.

So, you have shown us a big flaw, I believe, in our concept. A flaw that we will want to correct.

Thank you very much for doing that, Mr. Field.

Mr. **Field**. Senator, in your consultation and referral to this issue with the Justice Department and the Department of the Interior, we would be pleased to be included with that consultation as tribal governments in resolving that particular issue.

Senator **Melcher**. Yes, yes; we will. We will be delighted to do so. It will give us a well-rounded approach.

Thank you both very much for your testimony. It is very helpful to us.

Mr. **Field**. Thank you.

Senator **Melcher**. That concludes our list of witnesses today. I will now make part of the record the statement of James A. McCann, county attorney for Roosevelt County, Wolf Point, MT.

[Prepared statement of Mr. McCann appears in the appendix.]

Senator **Melcher**. We do have other statements that have been submitted to the committee that we will make part of the record, and, for that reason, as well as for the opportunity of any other interested party to submit a statement for this hearing record, we will leave the hearing record open for 2 weeks—14 days.

With that, the committee is adjourned.

[Whereupon, at 12:23 p.m., the hearing was adjourned, to reconvene upon the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

PREPARED STATEMENT OF SENATOR JOHN MELCHER

I INTRODUCED A FEDERAL MAGISTRATE ACT IN THE 96TH AND 98TH CONGRESS'S.

THE TWO FIELD HEARINGS THAT WERE HELD ON THIS LEGISLATION BROUGHT TO LIGHT THE NEED FOR ADDITIONAL PROVISIONS TO THE BILL, INCLUDING THE APPOINTMENT OF A PROSECUTOR FOR EACH FEDERAL MAGISTRATE AND THE NEED TO CLARIFY THAT A SPECIAL MAGISTRATE WOULD NOT BE APPOINTED TO ANY INDIAN RESERVATION WHERE THE STATE HAD ACQUIRED CRIMINAL JURISDICTION OVER OFFENSES COMMITTED WITHIN SUCH RESERVATION. THESE CHANGES WERE INCORPORATED IN S. 1177 WHICH I INTRODUCED ON MAY 21, 1985 AND WHICH IS THE SUBJECT OF TODAY'S HEARING.

THE INDIAN RESERVATION MAGISTRATES ACT DIRECTS THE PRESIDENT TO APPOINT SPECIAL MAGISTRATES WITH JURISDICTION OVER CERTAIN OFFENSES COMMITTED ON INDIAN RESERVATIONS AS WELL AS JURISDICTION IN CIVIL MATTERS. THE BILL ALSO PROVIDES THAT FOR EACH SPECIAL MAGISTRATE APPOINTED, THE ATTORNEY GENERAL SHALL APPOINT AN ASSISTANT U.S. ATTORNEY WHOSE PRIMARY RESPONSIBILITY SHALL BE THE PROSECUTION OF CRIMES AND OFFENSES BEFORE SUCH MAGISTRATE.

THIS COUNTRY HAS HAD A HISTORY OF INDIAN TREATIES AND ACTS OF CONGRESS, BUT THERE ARE YET TO BE FOUND WAYS OF CLOSING THE BLANK SPOTS IN THE U.S. LAW CONCERNING AUTHORITIES AND JURIS-

DICTIONS OF THE FEDERAL AND STATE GOVERNMENTS AND INDIAN TRIBES AND INDIAN RESERVATIONS.

THERE DOES NOT SEEM TO BE ANY CLEAR FEDERAL JURISDICTION OVER WHAT IS TO BE DONE ON THE INDIAN RESERVATION, EXCEPT WITH THE MAJOR CRIMES, AND THAT IS THROUGH THE FBI AND THE FEDERAL COURTS. ONLY A FEW STATES HAVE BEEN GRANTED AUTHORITY BY CONGRESS FOR CRIMINAL JURISDICTION ON RESERVATIONS, AND THAT WAS UNDER PUBLIC LAW 83-280. ALASKA, CALIFORNIA, MINNESOTA, NEBRASKA, OREGON, AND WISCONSIN WERE GIVEN THAT AUTHORITY BY CONGRESS.

NOW, APPARENTLY UNDER PUBLIC LAW 280, OTHER STATES, WHICH WERE CALLED OPTIONAL STATES, DO HAVE THE AUTHORITY TO ASSERT JURISDICTION UNDER CERTAIN CONDITIONS.

TRIBAL JURISDICTION ON A RESERVATION THROUGH A TRIBE'S CONSTITUTION AND COUNSEL IS LIMITED. AND THE OLIPHANT DECISION IN THE STATE OF WASHINGTON A FEW YEARS AGO RULED THAT THE TRIBAL POLICE OFFICERS ARE NOT ALLOWED TO ARREST NON-INDIANS ON A RESERVATION. THEREFORE THERE IS NO CLEAR METHOD OR PROCESS AT THE PRESENT TIME TO ENFORCE EVEN THE MOST BASIC LAW AND ORDER PROCEDURES ON RESERVATIONS, UNLESS THERE ARE COOPERATIVE AGREEMENTS BETWEEN TRIBAL, COUNTY, STATE AND FEDERAL OFFICIALS THAT ARE UNCHALLENGED OR THAT GO UNCHALLENGED IN COURT.

THAT SEEMS TO BE SORT OF A GOOD FAITH MEANS OF MAINTAINING THE PEACE AND ASSURING JUSTICE IN A NO MAN'S LAND THAT CAN BREAK DOWN ON ALMOST ANY GIVEN DAY WHEN SOMEONE OR SOME GROUP CHALLENGES

THE LEGALITY OF WHATEVER SEEMS TO BE THE SYSTEM OF COOPERATIVE LAW AND ORDER ENFORCEMENT.

THE BILL DEALS PRIMARILY WITH BROADENING THE POWERS OF THE FEDERAL COURT SYSTEM BY ESTABLISHING SPECIAL FEDERAL MAGISTRATES ON INDIAN RESERVATIONS WITH CLEAR JURISDICTION TO UTILIZE COUNTY, STATE, FEDERAL AND TRIBAL LAW ENFORCEMENT OFFICERS IN WARRANTS, SUMMONSES, ARRESTS AND TRIBAL PROCEDURES ON INDIAN RESERVATIONS.

ALTHOUGH THERE ARE MANY PROBLEMS THAT ARE CONFRONTING THE RELATIONSHIP BETWEEN THE INDIAN TRIBES AND NON-INDIANS, EITHER ON THE RESERVATION OR ADJACENT TO THE RESERVATION, WE HAVE TO START SOMEWHERE IN MEETING THE CHALLENGES POSED BY THESE UNSOLVED QUESTIONS OF RIGHTS. MAINTAINING LAW AND ORDER IS BASIC, AND THIS BILL SEEKS TO FIND A SOLUTION.

PREPARED STATEMENT OF MARK M. RICHARD

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department of Justice on S. 1177, a bill that would establish special magistrates with jurisdiction over federal crimes in Indian country. While we have no disagreement whatsoever with the intention of this bill, namely the improvement of law enforcement in Indian country, we believe S. 1177 provides for an unnecessarily cumbersome and expensive solution to what is a sporadic and by no means universal problem. Consequently, we oppose its enactment.

The apparent motivating factor behind this bill, and in fact behind its predecessors introduced in the 96th and 98th Congresses, 1/ is a perception that "[t]here does not seem to be any clear Federal jurisdiction over what is to be done on the Indian reservation, except with the major crimes, and that is through the FBI and the Federal courts." 2/ Moreover, there is said to be "no clear method or process at the present time to enforce even the most basic law and order procedures on reservations, unless there are cooperative agreements between tribal, county, State and Federal officials that are unchallenged in court." 3/

While to be sure law enforcement on Indian reservations is often carried out through cooperative agreements entered into by

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1/ See S. 2832, a virtually identical bill introduced in the 96th Congress, and S. 3092, in the 98th Congress.

2/ See remarks of Senator Melcher, Cong. Rec., May 21, 1985, p. S6711.

3/ Id.

tribal, state, and federal officials, the law of which government -- the tribe, the state, or the United States -- has jurisdiction over a particular offense is well settled. Moreover, while jurisdiction in Indian country is indeed complex, it has been our experience that it is generally well understood by those officials who deal with it on a daily basis. If I may, Mr. Chairman, I would like to set out a brief outline of this jurisdictional arrangement by way of background to my discussion of S. 1177.

Background: Criminal Jurisdiction in Indian Country

As you know, criminal jurisdiction in Indian country is divided between federal, state, and tribal courts depending on the status -- Indian or non-Indian -- of the perpetrator of the crime and the victim, if any. The scheme for dividing jurisdiction rests on four foundations. The first is that, in the absence of an enactment of Congress specifically authorizing the States to act, the States do not have jurisdiction over offenses by Indians. [4]

4/ This was originally based on the Commerce Clause of the Constitution (Art. I, section 8, clause 3) which states that the Congress shall have power: "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." For the last century, however, the Supreme Court has recognized that the federal government's right to assert jurisdiction in Indian country to the exclusion of State jurisdiction is based at least as much on historical reality as on the Commerce Clause. Thus, in United States v. Kagama, 118 U.S. 375, 382-384 (1886) the Court noted the semi-sovereign status of the tribes which had become dependent on the United States and did not owe allegiance to the individual States.

The second is the wording of 18 U.S.C. 1152 and 1153. The first paragraph of section 1152 states in essence that the laws that apply on federal enclaves apply in Indian country. The second paragraph of section 1152 then creates a major exception to this provision by stating that it does not extend to, among other things, offenses committed by an Indian against the person or property of another Indian. Then section 1153, commonly called the Major Crimes Act, carves out an exception to the exception in the second paragraph of section 1152 and provides that there is federal jurisdiction over an Indian who commits one of the sixteen serious felonies listed therein against the person or property of another Indian or of any other person.

The third foundation of Indian country jurisdiction is the line of cases commonly referred to as the McBratney and Draper decisions which hold that, in spite of the wording of the first paragraph of 18 U.S.C. 1152, purporting to extend federal enclave jurisdiction to Indian country, the States, not the federal government, have jurisdiction over offenses committed by a non-Indian against another non-Indian. 5/

The fourth, and final, underpinning for jurisdiction in Indian country came with the landmark 1978 Supreme Court decision in Oliphant v. Suquamish Tribe. 6/ In that case, the Supreme

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5/ See United States v. McBratney, 104 U.S. 621 (1882), and Draper v. United States, 164 U.S. 240 (1896).

6/ 435 U.S. 191 (1978).

Court held that tribal courts may not exercise jurisdiction over non-members of the tribe, in the absence of an enactment of Congress specifically authorizing a tribe to do so. As many Members of the Committee will recall, the Oliphant decision, coupled with a claim by some tribes that it had caused a gap in Indian country jurisdiction, caused the Department of Justice to research exhaustively the issue of jurisdiction over crimes in Indian country, particularly victimless crimes committed by non-Indians. 7/ The result was a memorandum by the Office of Legal Counsel concluding that the States, not the federal government, have exclusive jurisdiction over victimless crimes by non-Indians that do not pose a direct and immediate threat to Indian persons or property or to tribal interests. The memorandum also concluded that the States have concurrent jurisdiction with the federal government over crimes committed by non-Indians that do involve a threat to Indian interests. The Office of Legal Counsel memorandum, and in fact the entire issue of Indian

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7/ Any post-Oliphant "gap" only applied to victimless crimes because a crime committed by one non-Indian against another was clearly covered by the Draper and McBratney line of cases and subject to State jurisdiction while a crime by a non-Indian committed against an Indian was clearly subject to federal jurisdiction under the first paragraph of 18 U.S.C. 1152. It is interesting to note, moreover, that before the Oliphant decision only 33 of 127 courts operating on Indian reservations purported to extend jurisdiction over non-Indians, and in our view the claim that Oliphant somehow caused a tremendous problem may have been somewhat overstated.

country jurisdiction is discussed at length in the United States Attorneys' Manual. [8/]

Accordingly, we believe that jurisdiction over all persons in Indian country is clear and no legal uncertainties exist. In general, federal jurisdiction attaches for all offenses committed in Indian country except (1) tribal courts have jurisdiction over crimes committed by Indians against Indians other than the major crimes listed in 18 U.S.C. 1153; (2) jurisdiction over offenses committed by non-Indians against other non-Indians lies exclusively with the States; and (3) jurisdiction over victimless crimes committed by non-Indians lies with the State unless the crime poses a direct threat to individual Indian or tribal interests -- for example reckless driving near an Indian school, or disorderly conduct that disrupts a tribal meeting or religious ceremony -- in which case federal jurisdiction may be asserted.

S. 1177

Turning now to S. 1177, the bill establishes a system of special magistrates. One such special magistrate would be appointed by the President with the advice and consent of the Senate for each area of Indian country over which the United States exercises criminal jurisdiction under the provisions of chapter 53 of title 18. [9/] The special magistrates would serve

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[8/] See United States Attorneys' Manual, 9-20.200 ff.

[9/] This would, quite properly, exclude the need for federal magistrates for those areas of Indian country over which the (Footnote Continued) for eight year terms and would have to reside within the boundaries of the reservation they served or "reasonably adjacent thereto." They would serve either full-time or part-time depending on a Presidential determination of which type of magistrate was needed. The special magistrates would receive the same compensation as United States magistrates appointed under chapter 43 of title 28, United States Code (28 U.S.C. 631 et seq.) They would have the benefit of existing magistrate provisions in title 28 governing administration, character of service, and payment of expenses.

S. 1177 provides that the special magistrates would exercise all powers and duties conferred or imposed on United States magistrates by law or by the Rules of Criminal Procedure, and would have the power to conduct trials under section 3401 of title 18 "in conformity with and subject to the limitations of that section except that the special designation provided for in subsection 3401(a) of title 18, shall not be required, and the provisions of section 3401(b) of title 18, extending to a defendant the right to refuse trial before a magistrate and elect to be tried before a judge of the district court for the district in which the offense was committed, shall not be applicable to trials before the special magistrate." 10/ Moreover, S. 1177

(Footnote Continued)
States have been given jurisdiction by Public Law 280 or similar statutes. See 18 U.S.C. 1162.

10/ Proposed section 652 of title 28, S. 1177 pp. 4-5.

contains a provision allowing non-lawyers to appear on behalf of defendants (although assistance by such a layperson would not constitute a waiver of the defendant's right to be represented by counsel in any case in which he or she is entitled to appointed counsel, i.e. when the possible punishment may extend to imprisonment.) [11] Finally, the bill establishes a special jury system under which only residents of the reservation where the crime was committed can be impaneled. Juries are to be comprised of only six members.

Initially, we question the wisdom of requiring Presidential appointment of special magistrates. Because magistrates must work closely with district court judges on a day to day basis, the judges should have a voice in the selection process. Furthermore, the cumbersome process of Presidential appointment and Senate confirmation would rob the system of much of its flexibility and responsiveness. It is now possible to appoint magistrates with dispatch as the need arises in particular localities, as long as Congress has appropriated the necessary monies. [12] Presidential appointment, rather than appointment by the district court, coupled with the language in S. 1177 withdrawing the district court's power to designate magistrates as competent to try misdemeanors substantially lessens the supervision by the district judges of the magistrate's conduct.

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[11] See Scott v. Illinois, 440 U.S. 367 (1979).

[12] See 28 U.S.C. 631.

In addition to making the system of special magistrates for reservations somewhat awkward, these provisions also raise some question as to whether the special magistrate system contemplated by the bill are in compliance with Article III of the Constitution. As you know, Article III requires that the judicial power of the United States be exercised by officers with lifetime tenure and irreducible salaries. In United States v. Raddatz [13] the Court upheld the constitutionality of a provision in the Federal Magistrates Act of 1968 permitting the reference by the district judge of a motion to suppress to a magistrate for a recommendation and a ruling by the judge based on the written record developed by the magistrate. The defendant had argued that he was entitled to a live hearing before an Article III judge. Since in Raddatz the magistrate was not entering a final determination, only recommending a finding, the Court did not have to "decide whether...Congress could constitutionally have delegated the task of rendering a final decision...to a non-Article III officer." [14] In Raddatz it was clear that the magistrate was exercising authority derived from an Article III judge and that the magistrate was under the total control of the judge. S. 1177 substantially lessens the control of Article III judges over misdemeanor trials by special magistrates, and the special magistrate would be entering a final judgment on the

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13/ 447 U.S. 667 (1980).

14/ Id., p. 681.

entire case, not merely a ruling on a particular motion. The fact that under S. 1177 the accused must be tried by a special magistrate and may not request trial by an Article III judge further weakens the constitutional underpinnings of the bill.

On the other hand, it has long been established that Congress has the plenary power to govern Indian country and that such power includes the power to prescribe a criminal code applicable in Indian country. 15/ Moreover, the Supreme Court has recognized that, with respect to those areas or matters which Congress has plenary power to govern,, Congress may establish Article I (rather than Article III) courts and vest such courts with jurisdiction to enforce federal law. 16/ In fact, nonArticle III courts in federal territories were historically vested with jurisdiction to enforce all federal laws, including laws applicable to Indian country. Thus, it is probable that Congress may constitutionally establish Article I courts in Indian country, denominating the judges "special magistrates," and vest them with jurisdiction over federal misdemeanors. Nevertheless, the fact that the bill sets up Article I courts, coupled with the provisions allowing non-lawyer representation of the accused,

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15/ United States v. Kagama, supra; United States v. Antelope, 430 U.S. 641 (648) (1977); United States v. Wheeler, 435 U.S. 313, 319 (1978).

16/ In re Ross, 140 U.S.453 (1891) (consular courts); American Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511 (1828) (federal territories); Stephens v. Cherokee Nation, 174 U.S. 445 (1899) (Indian citizenship courts).

creates at least the appearance that persons brought before such courts (many of whom would likely be Indians) are being offered a different, and somewhat inferior, brand of justice.

Our most significant objection to S. 1177, however, is that we are not convinced that the special magistrate system is really necessary. S. 1177 would not alter the way jurisdiction is divided between federal, State, and tribal courts. The special magistrates courts would not have jurisdiction over crimes committed by one Indian against the person or property of another Indian (because of the second paragraph of 18 U.S.C. 1152), and the special magistrates courts would not have jurisdiction over crimes by one non-Indian against another (because of the Draper and McBratney line of cases). The special magistrates could only hear misdemeanor cases. A misdemeanor is a case for which the maximum term of imprisonment is one year or less. That limitation would preclude magistrates from hearing cases involving Indian defendants brought under the Major Crimes Act, and a non-Indian charged with committing one of the serious offenses against an Indian, while prosecutable in a federal court, is certainly deserving of prosecution at the felony level with appropriately severe sentences.

That leaves relatively few crimes for the special magistrates. Their case load would consist of victimless crimes by Indians and, occasionally, misdemeanors by non-Indians. I would note that at the present time victimless crimes by Indians are usually handled by tribal courts, although federal courts also have jurisdiction (under the first paragraph of 18 U.S.C

1152.) Establishing special magistrates on Indian reservations to handle all of these cases would thus weaken tribal courts. While some tribal courts, like those in any other system, may be less than perfect, we have no indication that all, or even very many of them, are unequal to the task of handling such minor offenses as traffic violations and disorderly conduct committed by members of the tribe.

As for victimless crimes committed by non-Indians and minor offenses committed by non-Indians against Indian persons or property the State courts have jurisdiction over these offenses. For victimless crimes, State jurisdiction is, with some exceptions, exclusive. Nevertheless, we are aware of the view of some persons that there is a *de facto* gap in Indian country law enforcement because some state prosecutors allegedly are unwilling to prosecute these offenses by non-Indians. In theory, at least, placing special federal magistrates on Indian reservations would provide another forum in which to prosecute those cases of victimless crimes in which there is federal jurisdiction. Such special magistrates courts would also be another forum in which to prosecute crimes by Indians committed against non-Indians or victimless crimes by Indians. We are also aware that some United States Attorneys have been criticized for declining too many of these cases to the detriment of the reservation communities.

On balance, however, we do not think that creating a new system of magistrates for every Indian reservation is the most effective solution to the problems of either state or federal declinations. As you know, problems in Indian country are not uniform from one reservation to another. They differ widely from State to State and even among the reservations in a particular State. We think that these problems may be better addressed by continuous cooperation among State, tribal, and federal prosecutors rather than the creation of an additional court system that would likely weaken tribal courts and would probably discourage State officials from prosecuting non-Indians in State courts. On many reservations, tribal and BIA police have been crossdeputized as State officers and State law enforcement officers have been deputized as tribal or BIA police officers. Such cross-deputized officers may make an arrest without regard to the Indian or non-Indian status of the apparent offender and then bring him or her before the appropriate court. We realize that cross-deputization does not always work. Nevertheless, on some it apparently does and represents the type of cooperation we expect to see emulated by prosecutorial officials.

For our part, we believe United States Attorneys are sensitive to the law enforcement problems in Indian country. Department of Justice policy on their special responsibility for Indian country has been clearly set out in the United States Attorneys' Manual since shortly after the Oliphant case. I would like to quote that important paragraph:

> "U.S. Attorneys have a very important role to play in reacting to crimes by non-Indians against Indians. While some states may be willing to prosecute, this should never be assumed. The key is close liaison with

state officials, either directly or through the Federal Bureau of Investigation (FBI), to make sure that all appropriate cases involving offenses offenses by non-Indians against Indians are prosecuted vigorously. U.S. Attorneys shoulder a heavy responsibility in making sure that the tribal community is protected from crimes by persons over whom the tribe has no jurisdiction. In all cases where the state refuses to prosecute or does so inadequately, U.S. Attorneys should carefully consider federal prosecution, recognizing that a declination means that the offender will go unpunished. A declination in favor of 'state prosecution' is not sufficient protection for the tribal community or the individual Indian victim if the state will not prosecute for some reason unrelated to the merits of the particular case." 9 USAM §20.215

In sum, Mr. Chairman, while we are not unaware of the perceived problems in law enforcement in Indian country, we do not believe that the system of special magistrates contemplated by S. 1177 represents the best approach to alleviate these problems. Accordingly, we oppose this bill's enactment. That concludes my prepared statement and I would be happy to answer questions at this time.

U.S. Department of Justice

Criminal Division

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

SEP 26 1986

Honorable Mark Andrews
Chairman
Senate Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During my September 11, 1986 testimony before your Committee on S. 1177, a bill to establish special magistrates in Indian country, Senator Frank H. Murkowski requested a written response to the following questions:

> What was the basis on which certain states were given criminal jurisdiction over Indian reservations by Public Law 83-280 (18 U.S.C. 1162)? and
>
> What effect would S. 1177 have upon the native villages of Alaska?

Public Law 83-280

The legislative history of Public Law 83-280 reflects that Congress found that the tribes within the enumerated states were not adequately organized to carry out their law enforcement responsibilities of dealing with minor offenses between tribal members, and concluded that the problem could best be remedied by conferring jurisdiction on states indicating a willingness to accept such responsibility. S. Rep. No. 699, incorporating H. Rep. No. 848, 83rd Cong., 1st Sess., reprinted at 1953 U.S. Code Congressional and Administrative News, p. 2409. Congress also determined that federal jurisdiction over reservation crimes should be terminated and conferred exclusively upon those states. Ibid.

Alaska

Criminal jurisdiction over Indian country was conferred on the Territory of Alaska by Public Law No. 85-615. The legislative history of that statute indicates that, prior to certain recently decided lower court cases, it had not been recognized that the Alaskan native villages were "Indian country" within the meaning of Title 18, United States Code, Section 1151. Because the villages did not have adequate law and order machinery, Congress saw fit to restore the status quo, under which Territorial law had been enforced by the Territorial government. S. Rep. No. 1872, 85th Cong., 2nd Sess., *reprinted at* 1958 U.S. Code Congressional and Administrative News, p. 3347. Thereafter, on the request of the State of Alaska and the Metlakatla Indian Community on the Annette Islands, Congress, by Public Law No. 91-523, restored jurisdiction over minor offenses to the Community, concurrent with the state, when it appeared that the Community was better able than the state to provide such law enforcement for that remote but well-organised community. H. Rep. No. 91-1545, 91st Cong. 2nd Sess., *reprinted at* 1970 U.S. Code Congressional and Administrative News, p. 4783.

In sum, as codified in 18 U.S.C. 1162, the State of Alaska has plenary criminal jurisdiction over all Indian country within its boundaries. Such jurisdiction is exclusive of the federal government, and, with the exception of the Metlakatla Community, of the native communities. 18 U.S.C. 1162(a, c).

S. 2177

As the United States exercises no criminal jurisdiction under the provisions of chapter 53 of Title 18, United States Code (18 U.S.C. 1151 et seq.), over Indian country in Alaska, S. 1177, if enacted, would not authorize appointment of special magistrates in that State. S. 1177 §2, proposed 28 U.S.C. §651.

We hope this letter will sufficiently respond to Senator Murkowski's inquiry. Should you or he desire more information please do not hesitate to call upon me.

Sincerely,

/s/ Mark M Richard

MARK M. RICHARD
Deputy Assistant
Attorney General
Criminal Division

cc: Senator Melcher
Senator Murkowski

PREPARED STATEMENT OF HAZEL ELBERT

Good morning Mr. Chairman and members of the Committee. I am pleased to be here today to discuss S. 1177, the "Indian Reservation Special Magistrate and Law Enforcement Act."

S. 1177 amends title 28 of the U.S. Code by adding a new chapter 44 - Indian Reservation Special Magistrates. The bill would provide for Presidential appointment of magistrates to serve each reservation where the United States exercises criminal jurisdiction. Magistrates would have the same powers as those conferred on U.S. Commissions by law, the power to administer oaths, impose conditions of release and take affidavits and depositions, conduct trials under 18 U.S.C. 3401 and other duties or powers exercised by a U.S. magistrate authorized by the district court in which he/she serves. These magistrates would serve either full-time or part-time depending on need and would receive the same compensation as U.S. magistrates appointed under chapter 43 of title 28, U.S. Code (28 U.S.C. 631 et.seq.). S. 1177 would allow non-lawyers to appear on behalf of defendants and would establish a special jury system whereby only residents of the reservation where the crime was committed could be impaneled. Juries would be composed of six members.

We oppose enactment of S. 1177.

Although the Bureau of Indian Affairs supports Senator Melcher's attempt to improve the law enforcement machinery in Indian Country, we feel that the proposed legislation will not accomplish this, and may actually result in the undermining of the tribal judicial systems just when these systems are taking on a greater role in administering justice within Indian Country. Since my colleague from the Department of Justice so aptly describes the current jurisdictional situation in Indian Country in his statement, I will not repeat that discussion but will focus my remarks on the legislation at hand.

First, it is unrealistic to direct that a special magistrate be appointed "to serve each Indian reservation", as is called for in the proposed Section 651(a). This could result in over 500 special magistrates throughout Indian Country. Not only would the cost and support services be substantial, but many reservations would not support enough cases to warrant even part-time magistrates. Reservations range in size from less than 100 tribal inhabitants to several thousand, giving rise to a great variance in caseloads.

Secondly, the current law under 28 U.S.C. 631(a) allows that "Where the conference deems it desirable, a magistrate may be designated to serve in one or more districts adjoining the district for which he is appointed." Under Section 631(c), part-time magistrates can be appointed where necessary. It appears that the current law would allow for an increase in federal magistrates and part-time magistrates where it is necessary to meet the needs of certain reservation areas.

Rather than establish an additional judicial layer, the Bureau would recommend several changes under current laws that might better meet the law and order needs of Indian Country.

1) Amend the provisions in 25 U.S.C. 1302(7) to allow tribes to impose penalties of up to 1 year imprisonment and fines of $1,000, although we understood that the Department of Justice may have due process and other concerns with this recommendation.
2) Direct and appropriate funds to law enforcement and tribal courts to insure that they establish adequate minimum operating budgets, not subject to fluctuating Indian Priority System funding.

3) Amend the provisions of the Indian Child Welfare Act (25 U.S.C. 1901 et.seq.) to allow for reciprocity in a wider range of juvenile related cases other than just child custody proceedings.

4) Amend current laws that would restrict federal magistrates from holding hearings in Indian Country.

5) Provide statutory authority delineating BIA law enforcement duties and powers.

6) Allow tribes, to assume criminal jurisdiction over non-Indians, provided a particular tribe requests such authority and such authority and such a request is evaluated by the Congress on a case by case basis against the special needs of the reservation, the capability and resources of the tribe, and the views of those most directly affected.

I believe implementation of these recommendations would be more cost effective, would strengthen tribal court systems, and would bolster the current federal court system resulting in a narrowing of the gap between the tribal court system and the federal court system.

This concludes my prepared statement. I will be happy to answer any questions you may have.

PREPARED STATEMENT

OF

HONORABLE H. DALE COOK
CHIEF JUDGE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ON BEHALF OF
THE JUDICIAL CONFERENCE OF THE UNITED STATES

BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ON

THE INDIAN RESERVATION SPECIAL MAGISTRATE AND
LAW ENFORCEMENT ACT OF 1984

S. 1177

THURSDAY
SEPTEMBER 11, 1986

Mr. Chairman:

I want to express my personal appreciation and that of the federal judiciary for this opportunity to testify on S. 1177, the Indian Reservation Special Magistrate and Law Enforcement Act. I am H. Dale Cook. I became a United States District Judge for the Northern, Eastern and Western Districts of Oklahoma on December 31, 1974, and was appointed Chief Judge of the Northern District on February 26, 1979. I am a member of the Committee on the Administration of the Magistrates System of the Judicial Conference of the United States, and I appear before you today in that capacity.

The Judicial Conference opposes the creation of a new and separate parallel system of special magistrates having limited jurisdiction concurrent with that of existing United States magistrates. The Federal Magistrates Act provides ample authority for the Judicial Conference to establish additional magistrate positions at appropriate locations as the need arises. It is the view of the Conference that the problems addressed by the legislation are primarily matters of law enforcement and prosecutorial policy rather than questions of judicial resources. The Conference also opposes the bill's provisions for juries in cases before the special magistrates.

Most often, requests for comments on legislation affecting the federal courts are made by the House and Senate Judiciary Committees, which have principal legislative and oversight authority for the Judicial Branch of government. Those Committees are familiar with the role of the Judicial Conference within the Judicial Branch of government. Since this Committee seldom deals with judicial matters, perhaps a brief explanation of the role of the Judicial Conference is in order.

The Judicial Conference of the United States

Under section 331 of title 28, United States Code, the Judicial Conference of the United States is the policy-making body for the administration of the United States Courts. While the structure of the federal courts is well-known — the district (trial) courts, the courts of appeals, and the Supreme Court of the United States — the structural arrangement for the administration of the Judicial Branch is not so familiar. The Judicial Conference, chaired by the Chief Justice of the United States, is composed of the chief judges of the circuit courts of appeals and one district judge from each of the regional circuits. Accordingly, the Conference is composed of twenty-six judges from around the country, who represent each level of the Judicial Branch. As members of the Judicial Conference, they serve as administrators and formulators of policy, not as members of a tribunal. The Judicial Conference establishes administrative policy for the court system and makes recommendations to Congress concerning changes in law that impact upon the judiciary's ability to serve the public efficiently and economically.

The Judicial Conference utilizes a committee structure, not unlike that of Congress, to consider administrative problems and policies and to evaluate legislation in response to Congressional requests. Both the present membership of the Conference and the present committee structure are presented in Appendix A to this statement. The Conference considers numerous legislative proposals each year and recommends what the members believe to be the best approaches to be taken with regard to organization, jurisdiction, procedure and administration of the federal judiciary. The Committee on the Administration of the Magistrates System, of which I am a member, has a variety of responsibilities to the Judicial Conference, not the least of which is the regular review of magistrate needs in each district.

Office of United States Magistrate

A brief review of the office of United States magistrate and the important duties that these officers perform in assisting the district courts in the disposition of cases may assist you in considering this legislation. A United States magistrate is a judicial officer of the United States district court who is appointed by the judges of the court. At the present time there are 273 full-time magistrate positions and 187 part-time magistrate positions authorized by the Judicial Conference and funded by the Congress. A full-time magistrate is appointed for a term of eight years, and a part-time magistrate serves for a term of four years. The office was established by the Federal Magistrates Act of 1968 and was built on the foundation of the former United States commissioner system. Commissioners had been authorized to try petty offense cases arising on federal property, to issue search and arrest warrants, to set bail, and to conduct other initial proceedings in criminal cases. The Federal Magistrates Act created a new position that would assume all the duties of the former commissioners and also be authorized to assume a wide range of judicial duties to assist district judges in the disposition of the growing caseloads in the district courts.

The jurisdiction which a United States magistrate exercises is the jurisdiction of the district court itself, delegated to the magistrate by the judges of the court under statutory procedures. In 1976, Congress amended the Magistrates Act to authorize a district judge to designate a magistrate to handle virtually any pretrial matter in the district court. The Magistrate Act was again amended in 1979 to authorize magistrates to exercise case-dispositive jurisdiction, including jury trials, over any civil case, upon consent of the parties. The amendments also expanded the authority of magistrates to handle all misdemeanor cases, with or without a jury.

Today, a magistrate's duties generally fall into four broad categories —

(1) Initial proceedings in criminal cases.

(2) Trial of misdemeanors, upon the defendant's consent.

(3) Conduct of pretrial proceedings in civil and criminal cases.

(4) Trial of civil cases, upon the parties consent.

In addition to handling the four specific categories of judicial duties above, a magistrate may be assigned any "additional duties as are not inconsistent with the Constitution and laws of the United States." During the year ended June 30, 1986, magistrates conducted over 129,000 preliminary proceedings in felony cases; handled more than 180,000 references in civil and criminal pretrial matters; reviewed more than 11,000 social security appeals and more than 23,000 prisoner filings, and tried more than 90,000 misdemeanors and more than 4,900 civil cases. A detailed statistical summary of the nature and volume of the work performed by magistrates during the year ended June 30, 1986 is included as Appendix B.

In addition to increasing the magistrates' authority, the 1979 amendments also provided rigorous standards for the selection and appointment of magistrates. Those requirements include public notice of all vacancies, a minimum requirement for appointment of five years' membership in a bar, and merit selection panels to screen candidates. Copies of a pamphlet describing the selection and appointment process have been provided to the staff for the use of the Committee. This material more fully discusses the office of United States magistrates and may help answer some of your questions about the system.

The Indian Reservation Special Magistrate and Law Enforcement Act of 1984

Under the bill a special magistrate would have jurisdiction within the boundaries of a designated Indian reservation to conduct preliminary proceedings in criminal cases and to try misdemenor cases. In addition, a special magistrate could be authorized by a district court to exercise the powers and duties of a United States magistrate. The bill also contains provisions concerning the law enforcement power of tribal police, appointment of additional assistant United States attorneys, representation of defendants and selection of juries in trials conducted by special magistrates.

The Judicial Conference realizes that there are problems relating to the enforcement of existing laws on Indian reservations. Those problems result, not from the lack of availability of judicial resources, but from allocation of law enforcement personnel and from prosecution policies. Therefore, the Conference opposes the creation of a new tier of special magistrates. The Judicial Conference also opposes the bill's specific provisions for juries in cases before special magistrates. At this point, I will discuss each provision of the bill examined by the Conference.

1. Special Magistrates

While recognizing the existence of United States magistrates, the bill would create a new system of special magistrates with overlapping jurisdiction. A special magistrate is to be appointed by the President with the advice and consent of the Senate for a term of eight years. Preferential consideration is to be given to qualified incumbent United States magistrates for such appointment. The bill would adopt the provisions of the Federal Magistrates Act as to administration except in the following instances:

(1) A special magistrate must reside within the reservation or reasonably adjacent thereto.

(2) The President would determine the need for each special magistrate position and whether the position would be full-time or part-time.

(3) The President would fix the compensation of part-time special magistrates.

(4) The proposal does not incorporate 28 U.S.C. § 638(a) which requires the Director of the Administrative Office to furnish each magistrate a copy of the United States Code and authorizes him to prescribe and provide docket books and forms.

(5) The proposal also omits references to 28 U.S.C. § 604 which provides certain authority for the Director of the Administrative Office to supervise the United States magistrates system.

Assuming that a need exists for additional magistrates to handle offenses on Indian reservations, no justification has been presented for establishing a separate tier of magistrates. The Federal Magistrates Act now provides ample authority for the Judicial Conference of the United States to establish additional United States magistrates at appropriate locations to handle whatever cases are actually prosecuted.

More importantly, no need has actually been demonstrated for additional magistrates. United States magistrates are already authorized to handle cases arising in Indian country and already serve at or near Indian reservations. The volume of cases brought before such magistrates, however, has generally been minimal. In any event, as judicial officers, magistrates do not initiate prosecutions, but decide the cases brought before them. Any need for additional judicial resources in Indian country that may arise from increased law enforcement and prosecution could be accommodated by the existing

United States magistrate system. The flexibility of the present Federal Magistrates Act provides ample assurance that judicial officers will be available to hear any misdemeanor cases which may be prosecuted. Accordingly, the creation of an additional tier of special magistrates is unnecessary and is opposed, as a matter of policy.

I hasten to point out that vesting appointment and reappointment authority of the special magistrates in the Executive Branch, when prosecution is brought by the Executive Branch, may jeopardize the independence and impartiality of the bench. The Judicial Branch always endeavors to avoid even the appearance of unfairness or partiality. United States magistrates are appointed and removable only by the district court. The district court also retains control over a reference to a magistrate by its power to withdraw a reference, thus giving the parties initial access to an independent judicial officer. Although Congress can still lower a magistrate's salary, magistrates are not dependent on the political branches of government for their appointment. See *Northern Pipeline Co.* v. *Marathon Pipeline Co.*, 458 U.S. 50 (1982).

2. Jurisdiction

Within the boundaries of the reservation to be served, a special magistrate will have the authority to conduct preliminary commissioner-type proceedings in any criminal cases and to conduct trials in misdemeanor cases. The misdemeanor trial jurisidiction would differ from that of the United States magistrates in that (1) the special designation of the district court would not be required; and (2) the defendant would not be permitted to elect a trial before a district judge. Each special magistrate may also be authorized by the district court to exercise any other power or duty of a United States magistrate.

The jurisdictional provisions are closely patterned after the existing Federal Magistrates Act. If a special magistrate system is created, the proposed jurisdictional provisions would be appropriate. The jurisdiction proposed, however, overlaps that exercised by United States magistrates. Accordingly, the bill should clarify what preference, if any, should be given to prosecuting offenses in Indian country before special magistrates and what residual authority, if any, would be left to United States magistrates.

The bill contains several special procedural provisions applicable only to trials before special magistrates. If residual authority in such cases is retained by United States magistrates, there should be a clear statement as to the applicability of the special provisions when a case is heard by a United States magistrate.

3. Remand of Custody

The bill authorizes a special magistrate, upon a determination that federal jurisdiction over the alleged offense is lacking, to order the defendant remanded to the custody of the appropriate law enforcement officials. Ordinarily, when a federal court determines that it lacks statutory jurisdiction over a criminal defendant, the charges are dismissed and the defendant is discharged from federal custody. Whether the defendant continues to be held on potential charges within a state's jurisdiction generally depends on the existence of cooperative agreements among the respective law enforcement agencies and the willingness of the prosecutor of the respective jurisdiction to pursue the charges. There does not appear to be any reason to require more extensive judicial intervention in such matters in cases arising in Indian country.

4. Enforcement Officers

Tribal police officers and other law enforcement agents are specifically authorized to execute orders of special magistrates, to the extent that the officers have geographic jurisdiction. The authorization for tribal and state police officers and assistant United States attorneys to become involved in cases before special magistrates is primarily a policy question for determination by the Congress.

5. Lay Representation

The defendant's right to counsel would be extended to include a right to be assisted by a "lay spokesman." Provision is made to immunize such "lay spokesman" from prosecution for the unauthorized practice of law.

Congress should be aware of the following concerns in its consideration of the issue of lay representation:

(1) Such representation raises the spectre of inadequate representation; and

(2) The Criminal Justice Act does not compensate lay representatives.

6. Juries

The proposal requires that the special magistrate maintain a list of eligible jurors, in consultation with tribal authorities and county and municipal officials. Only persons who reside within the reservation would be eligible to serve on the jury panel. Juries in trials before special magistrates would consist of six persons.

The Judicial Conference opposes the bill's specific provisions for juries in cases before special magistrates for the following reasons:

(1) The provision for the maintenance of separate jury pools by the special magistrate would be costly and, essentially, duplicate the work of the court's clerk or jury commissioner.

(2) Restricting the composition of juries to "persons who actually reside within the reservation in which the offense is alleged to have been committed" may depart from the philosophy of the Jury Selection and Service Act of 1968 which establishes a right to a jury selected "from a fair cross-section of the community." That act established the judicial district or division as an appropriate "vicinage" for jury selection.

(3) Requiring the magistrate to compile an independent list of persons "eligible or registered" to vote in state, local, or tribal elections is inconsistent with the provision of 28 U.S.C. § 1863(b)(2) prescribing the use of the local voter registration list or lists of actual voters.

(4) Limiting the size of the jury to six persons is an unprecedented departure from the traditional practice of having 12 jurors which has governed the trial of federal criminal cases.

Conclusion

The need for magistrate positions is directly related to the prosecutorial activities of the United States attorneys or their delegates. We have reviewed numerous magistrate positions at or near Indian reservations as part of our ongoing regular reviews of magistrate needs in each district. Generally speaking, there has been little change in the number of cases being prosecuted in Indian country. More notably, we have received few, if any, requests for additional magistrate positions in Indian country. Should there be a need for additional magistrate resources shown by law enforcement agencies, however, the Judicial Conference and the Administrative Office are ready to move quickly to make the necessary resources available under the Federal Magistrates Act.

The Judicial Conference continues to believe that the types of problems raised should be addressed as matters of law enforcement and prosecution policies rather than questions of judicial resources. Magistrates are judicial officers and, as such, do not initiate prosecutions but decide cases brought before them. We believe that the existing magistrates system has sufficient flexibility to accommodate any need for additional judicial resources in Indian country that may arise from increased law enforcement and prosecution activity and that, therefore, the creation of a separate, parallel system of magistrates is unnecessary, duplicative, and a waste of taxpayer dollars.

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

September 30, 1986

Honorable Mark Andrews
Chairman, Select Committee
on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to provide information requested by Senator Melcher during the testimony of the Honorable H. Dale Cook, Chief Judge of the United States District Court for the Northern District of Oklahoma who appeared as a witness before your committee on Septembe[illegible] 1986 at a hearing on S.1177, the Indian Reservation Special Magist[illegible]d Law Enforcement Act.

In his testimony, Judge Cook discussed the cost of establishing a full-time United States magistrate position and indicated that the Administrative Office would provide the Committee with detailed information on the cost. Accordingly, I am enclosing a breakdown of the cost of establishing a new full-time magistrate position.

During the hearing, Senator Melcher asked that we provide information on the caseload of the part-time magistrate at Wolf Point, Montana who serves the Fort Peck Indian Reservation. In accordance with that request, I am enclosing two reports which review the workload of the magistrate position at Wolf Point and other magistrate positions serving Indian reservations in the District of Montana. I am also enclosing the magistrate workload tables for the District of Montana which set forth the workload of each magistrate in the district for the twelve month period ending June 30, 1985. As the table indicates, the magistrate at Wolf Point disposed of 2 petty offense cases and handled 41 preliminary proceedings in felony cases. Altogether the magistrates in Montana disposed of a total of 333 petty offense cases during the period and the district judges disposed of 6 petty offense cases, 23 misdemeanor cases above the level of a petty offense, and 145 felony cases.

In addition, I am enclosing detailed statistical tables which set forth, by district, the workload of all United States magistrates for the 12 month period ended June 30, 1986. During that period, magistrates disposed of 79,971 petty offense cases and 12,298 misdemeanor cases above the level of a petty offense. In handling those cases, magistrates conducted a total of 138 jury trials and 13,081 trials without a jury. Magistrates also conducted 131,070 initial proceedings in felony cases pursuant to 28 U.S.C. § 636(a) and handled 220,283 "additional duties" in civil and criminal cases pursuant to 28 U.S.C. § 636(b) and (c).

I hope that this information will be helpful to your Committee. If we can be of any further assistance, please contact Mr. Duane R. Lee, Chief of the Magistrates Division, at 633-6251.

Sincerely,

L. Ralph Mecham
Director

cc: Honorable H. Dale Cook
Honorable John Melcher

Enclosures

APPENDIX "A"

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JUDICIAL CONFERENCE OF THE UNITED STATES
Title 28, United States Code, Section 331
Chief Justice of the United States, Presiding Officer
All Chief Judges of the U.S. Courts of Appeals
d a District Judge Representative from each Circuit (other than the Federal Circuit)
Elected by the Judges of the Circuit, for a term of three years

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28 USC, APP I, 303(a)

REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS
28 USC 331 and 372(c)

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BICENTENNIAL OF THE CONSTITUTION

JUDICIAL BRANCH

ADMINISTRATION OF THE MAGISTRATES SYSTEM

ADVISORY COMMITTEE ON CODES OF CONDUCT

February 1986

APPENDIX "B"

Table 13
Matters Disposed of by U.S. Magistrates
1972, 1977, and 1981 through 1986

Activity	1972	1977	1981	1982	1983	1984	1985	1986	Percent Change 1986/1985
Trial Jurisdiction Cases	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Misdemeanors Other Than Petty Offenses	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Petty Offenses	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Preliminary Proceedings	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Search Warrants	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Arrest Warrants	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Initial Appearances	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Material Witnesses	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Bail Reviews	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Preliminary Examinations	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Grand Jury Returns	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Arraignments	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Other	*	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Additional Duties	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Criminal	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Motions (A)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Motions (B)	*	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
(Evidentiary Hearings)[1]	*	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Pretrial Conferences	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Calendar Calls	*	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Other	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Civil	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Pretrial Conferences	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Motions (A)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Motions (B)	*	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
(Evidentiary Hearings)[1]	*	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Social Security	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Special Masterships	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Calendar Calls	*	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Other	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Prisoner Litigation	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
State Habeas	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Federal Habeas	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Civil Rights	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
(Evidentiary Hearings)[1]	*	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Civil Consent Cases	*	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Without Trial	*	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Jury Trial	*	[illegible][2]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Non-Jury Trial	*	*	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

* Not separately reported.
[1] Not included in totals.
[2] Includes both jury and non-jury trials.

COST TO THE JUDICIARY OF ESTABLISHING A NEW FULL-TIME MAGISTRATE

Appropriation: Salaries of Supporting Personnel	
Salary of the Magistrate	$ 68,400
Salaries: Legal Assistant, Grade JSP-12	31,619
Secretary, Grade JSP-10	24,011
Clerical Assistant, Grade JSP-9	21,804
Agency contribution for civil service retirement, life insurance, health benefits, Medicare, and Social Security	22,766
TOTAL	168,600
Appropriation: Expenses of Operation and Maintenance of the Courts	
Travel, Magistrate and staff	2,000
Miscellaneous expenses (communications, supplies, etc.)	13,700
Security investigation	4,000 NR
General office equipment:	
Initial cost	5,500 NR
Annual cost (second and succeeding years)	(600)
Word processing equipment purchase:	
Initial cost	10,000 NR
Annual cost (second and succeeding years)	(1,000)
Courtroom recording equipment:	
Initial cost	3,000 NR
Annual cost (second and succeeding years)	(300)
Library: Initial cost	27,000 NR
Annual cost (second and succeeding years)	(4,000)
Furniture and furnishings:	
Initial cost	50,200 NR
Annual cost (second and succeeding years)	(5,000)
TOTAL (initial cost)	115,400
TOTAL (annual recurring cost)	26,600
Appropriation: Space and Facilities	
Rental of space	51,100
Tenant alterations and other reimbursable services	4,700
TOTAL	55,800
GRAND TOTALS:	
Initial (first year) cost (rounded)	$340,000
Annual recurring cost (rounded)	$251,000

NR Nonrecurring expense

Prepared in: A.O. Budget Branch
Date: February 18, 1986

SURVEY OF MAGISTRATE POSITIONS
ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

DISTRICT OF MONTANA

July 1985

I. SYNOPSIS

The district court has requested that a part-time magistrate position be reestablished at Butte. The position was discontinued by the Judicial Conference effective September 30, 1984. The chief judge reports that the absence of a magistrate at Butte has resulted in difficulties for the court and law enforcement officers. [A copy of Judge Battin's letter is attached to this report.]

In addition, the current terms of office of the part-time magistrate positions at Great Falls, Kalispell, Helena, Missoula, Wolf Point, and Cut Bank are due to expire in 1986 or 1987. In accordance with procedures established by the Judicial Conference, the positions are being reviewed to determine: a) whether they should be continued for additional four-year terms of office; and (b) whether any changes should be made in the salaries or arrangements.

For the reasons set forth below, this report recommends:

- that a part-time magistrate position be authorized at Butte at a salary of $2,015 per annum;
- that the part-time magistrate positions at Great Falls, Kalispell, Helena, Missoula and Cut Bank be continued for additional four-year terms of office at their current respective salary levels; and
- that the part-time magistrate position at Wolf Point be continued for an additional four-year term of office and that the salary of the position be increased from $2,015 per annum to $3,022 per annum.

II. WORKLOAD OF THE MAGISTRATES

A. Background

The District of Montana is currently served by a full-time magistrate at Billings and by seven part-time magistrates.

Eleven part-time magistrate positions were authorized for the district during the national survey of magistrate positions in 1970. A twelfth part-time position was authorized at Bozeman in October 1972. Four part-time positions were eventually discontinued by the Conference, and the part-time position at Billings was converted in March 1982 to full-time status. The full-time magistrate was appointed on January 24, 1983.

Six of the part-time magistrate positions in the district were reviewed by the Judicial Conference in March 1984 as part of a special study of low-salaried magistrate positions. Four of those positions were retained, but the positions at Butte and Bozeman were discontinued effective September 30, 1984.

A complete list of the magistrate positions in the district and their respective workloads can be found in the attached court profile.

B. Butte

Butte is located in the southwestern portion of the district approximately 65 miles south of Helena and 85 miles west of Bozeman. A part-time magistrate position had been authorized at Butte from 1970 until it was discontinued effective September 30, 1984.

The salary of the position had been as high as $3,600 per annum, although it was reduced in March 1982 in view of a decreased caseload. When it was discontinued, the salary of the position was $1,872 per annum.

The following table sets forth the workload reported by the magistrates at Butte since 1980. The position was vacant from April 24, 1983 through September 1, 1983.

	Years Ended June 30th				
	1980	1981	1982	(9mos) 1983	(8mos) 1984
Misdemeanor	-	-	1	-	-
Petty offenses	6	4	19	13	2
(No. of trials)	(2)	(1)	(8)	(6)	(-)
Search warrants	3	1	-	-	-
Arrest warrants	4	8	9	-	5
Initial appearances	4	-	5	5	4
Other	-	1	2	-	-

During the eight-month period served by the magistrate in 1984, he reported that he spent a total of 84 hours on magistrate duties - 13.5 hours conducting proceedings and 70.5 handling other matters, including research, conferences with law enforcement officers, and CVB matters such as the issuance of follow-up summonses.

When the position was discontinued, it was noted that there was a sufficient volume of work performed by the magistrate at Butte to justify continuation of the position. It was concluded however, that there were alternatives which made it possible to eliminate the position. The court was of the view that the position should be retained.

At the time, it was noted that the full-time magistrate visited Butte at least once a month in the performance of his civil case duties. The full-time magistrate had indicated that he would be able to handle the small petty offense caseload at Butte during his regularly scheduled visits. He also had indicated that state judges at Butte would be available to handle occasional proceedings in felony cases in the absence of a resident magistrate.

Since the position was discontinued, however, the absence of a resident United States magistrate at Butte has resulted in difficulties for the court and law enforcement officers with regard to the handling of initial proceedings in felony cases. Attached to this report is a letter from the United States attorney for the District of Montana which outlines some of the problems. For example:

1) The deputy United States marshal at Butte estimates a "substantial" increase in man-hours and costs to transport numerous individuals to Helena and other areas.

2) There is an increasing reluctance by state court judges to handle any more United States magistrate matters since those matters are overloading their already crowded dockets.

3) The clerk's office has had problems maintaining proper records of matters handled by state judges. Moreover, there are no established procedures for payment of transcript costs or court reporter fees for proceedings in state courts.

4) The F.B.I. has indicated that their agents have experienced considerable inconvenience since the magistrate position was discontinued. Butte is the F.B.I. headquarters for Idaho and Montana, and there are 18 F.B.I. agents assigned to the Butte office.

The U.S. attorney also gave a detailed summary which listed 13 initial felony matters that arose between October 11, 1984 and November 30, 1984 which would have been handled by a magistrate at Butte. The U.S. attorney reported that the unavailability of a magistrate at Butte to handle those matters resulted in significant additional costs to the Government.

Based upon the court's experiences since the part-time magistrate position at Butte was discontinued, it appears that the number of initial felony matters at that location is too high to be handled effectively by state court judges or through coordination with magistrates at other locations.

Under those circumstances, it is recommended that a part-time magistrate position be authorized at Butte. In view of the workload reported by the previous magistrates at Butte, a salary of $2,015 per annum is recommended for the position. The salary should be reviewed in the future, however, if the actual workload of the new magistrate indicates that a higher salary is warranted.

C. Great Falls ($9, 179 per annum)

Great Falls is the second largest city in Montana and the residence of one of the district's three authorized judges. It is located in the west-central portion of the district, 90 miles north of Helena and 110 miles southeast of Cut Bank, where the nearest other magistrates are stationed. The city is adjacent to the Malstrom Air Force Base and the Lewis and Clark National Forest. The Blackfeet and Rocky Boys Indian Reservations and the Flathead Lake National Forest are within a one-to-two hour drive of the city.

At its September 1979 session, the Judicial Conference authorized an increase in the salary of the magistrate position at Great Falls from $2,250 per annum to $14,450 per annum to allow the court to assign additional duties to the magistrate under 28 U.S.C. §636(b). Following the increase, the magistrate began to handle prisoner petitions and post-indictment arraignments. When the full-time magistrate position was authorized by the Conference in March 1982, it was determined that it would no longer be necessary for the magistrate at Great Falls to handle prisoner petitions. As a result, the salary of the position was reduced to $8,200 per annum based upon the volume of criminal case duties which the magistrate would continue to handle. Cost-of-living adjustments have raised the salary of the position to $9, 179 per annum.

The following table sets forth the workload reported by the magistrate at Great Falls since 1980.

	Years Ended June 30th					
	1980	1981	1982	(11mos) 1983	1984	(6mos) 1985
Petty offenses	143	171	109	183	225	82
[Traffic]	[107]	[110]	[48]	[87]	[144]	[67]
(No. of trials)	(16)	(9)	(7)	(10)	(25)	(12)
Search warrants	-	3	-	2	2	1
Arrest warrant	3	1	4	7	8	2
Initial appearances	18	9	5	6	16	20
Arraignments	21	64	23	53	38	14
State habeas petitions	-	25	12	12	-	-
Civil rights petitions	-	15	8	8	-	-
All other	3	2	-	-	-	-

As the table indicates, there is a sufficient volume of work performed by the magistrate at Great Falls to justify continuing the position. During the year ended June 30, 1984, the magistrate reported that he spent a total of 192 hours on the conduct of magistrate proceedings - an average of 16 hours per month. In addition, the magistrate estimated that he spends an additional 4 hours per month on research and administrative matters for a total of 20 hours per month spent on magistrates duties. In view of the magistrate's total contribution of time and services, it appears that the salary of the position should be retained at its current level of $9, 179 per annum.

Accordingly, it is recommended that the part-time magistrate position at Great Falls be continued for an additional four-year term of office at the currently authorized salary of $9,179 per annum.

D. Kalispell ($5,037 per annum)

Kalispell is in the northwest section of the district 130 miles southwest of Cut Bank and 110 miles north of Missoula. The majority of the magistrate's caseload at Kalispell arises at Glacier National Park. The area served by the magistrate, however, also includes the Flathead Indian Reservation and the Flathead and Kootenia National Forests.

The workload reported by the magistrate at Kalispell since 1980 is set forth in the following table.

	Years Ended June 30th					
	1980	1981	1982	(11mos) 1983	(11mos) 1984	(9mos) 1985
Petty offenses	37	40	30	32	47	37
(No. of trials)	(16)	(10)	(4)	(5)	(7)	(8)
Search warrants	-	1	-	-	-	8
Arrest warrants	2	2	-	-	-	3
Initial appearances	2	2	-	2	1	2

In addition to the workload set forth above, the magistrate handles a number of Central Violations Bureau matters including the issuance of arrest warrants when violators fail to appear, non-appearance dismissals, and receipt of collateral forfeitures.

There is a sufficient volume of magistrate work at Kalispell, and geographic considerations support retention of the magistrate position. Although the salary is somewhat high in view of the workload, it is not significantly out-of-line with the other magistrate positions to warrant a reduction at this time, particularly since there has been a recent increase in the workload.

Accordingly, it is recommended that the part-time magistrate position at Kalispell be continued for an additional four-year term of office at the currently authorized salary of $5,037 per annum.

E. Helena ($4,030 per annum)

Helena, the state capital, is located in western Montana approximately 65 miles north of Butte and 100 miles northwest of Bozeman. A new district judge, who is scheduled to be sworn in on May 10, 1985 to fill the district's recently authorized third judgeship, will be stationed at Helena.

The magistrate at Helena serves an area in the southwest corner of the state, which includes numerous national forests. The nearest other magistrate positions in the district are at Great Falls, approximately 90 miles to the north, and Missoula, approximately 110 miles to the west.

When the incumbent was appointed on December 6, 1983, the position had been vacant for six months following the expiration of the former magistrate's term of office. The workload reported by the magistrates at Helena since 1980 is set forth in the following table. Due to reporting irregularities by the former magistrate, there is some question whether the workload reported is entirely accurate.

	Years Ended June 30th				
	1981	1982	(6mos) 1983	(6mos) 1984	(6mos) 1985
Misdemeanors	5	-	-	-	-
(No. of trials)	(1)	(-)	(-)	(-)	(-)
Petty offenses	5	55	36	11	22
(No. of trials)	(3)	(10)	(17)	(3)	(1)
Search warrants	1	-	-	2	-
Arrest warrants	10	-	-	8	1
Initial appearances	7	-	-	8	3
Bail reviews	-	-	-	2	1
Preliminary exams.	7	-	-	-	1
Other	-	-	-	-	2

Since her appointment, the incumbent has kept detailed records of her time spent on magistrate duties. For a twelve-month period following her appointment, the magistrate reported that she spent a total of 115 hours on magistrate duties - 29.25 on the conduct of proceedings and 85.75 on other matters including research, telephone conferences and travel. On an average, the magistrate spent 9.6 hours per month on magistrate duties.

At the court's request, the salary of the position was reviewed by the Conference at its March 1984 session. In view of the caseload of the position and the magistrate's total contribution of time and services, the salary was increased from $1,947 per annum to its current level of $4,030 per annum.

At this time, it is recommended that the part-time magistrate position at Helena be continued for an additional four-year term of office at the currently authorized salary of $4,030 per annum.

F. Missoula $3,022 per annum)

Missoula is located in western Montana 110 mile south of Kalispell, and 110 miles west of Helena. Several national forests and the Flathead Indian Reservation are located nearby. The part-time magistrate at Missoula has reported the following workload since 1980.

	Years Ended June 30th				
	1980	1981	1982	1983	(6mos) 1984
Misdemeanors	3	3	3	1	-
(No. of trials)	(-)	(-)	(1)	(-)	(-)
Petty offenses	23	14	18	17	12
(No. of trials)	(11)	(5)	(7)	(3)	(-)
Search warrants	1	7	6	6	1
Arrest warrants	1	-	7	6	1
Initial appearances	-	7	10	5	3
Preliminary exams.	2	1	-	1	-

Considering its remote location and the workload reported by the magistrate, continuation of the position at the presently authorized salary is justified.

Accordingly, it is recommended that the part-time magistrate position at Missoula be continued for an additional four-year term of office at the currently authorized salary of $3,022 per annum.

G. Wolf Point ($2,015 per annum)

Wolf Point is located in northwestern Montana on the Fort Peck Indian Reservation, approximately 30 miles west of the tribal headquarters at Poplar. Wolf Point is approximately 50 miles east of the magistrate position at Glasgow, and 300 miles from any other magistrate position in the district.

The workload reported by the magistrate at Wolf Point since 1980 is set forth in the following table.

	Years Ended June 30th					
	(10mos) 1980	(9mos) 1981	(9mos) 1982	1983	1984	(9mos) 1985
Misdemeanors	-	-	1	-	-	-
Petty offenses	-	1	5	3	2	-
(No. of trials)	(-)	(1)	(5)	(-)	(-)	(-)
Search warrants	-	-	-	-	-	1
Arrest warrants	9	14	16	28	13	11
Initial appearances	10	7	8	14	11	18
Preliminary exams.	1	-	-	-	-	1

For the year ended June 30, 1984, the magistrate at Wolf Point reported that he spent a total of 90 hours on magistrate duties - 24 hours on the conduct of proceedings and 66 hours on other matters including meetings with law enforcement officers and correspondence.

The majority of the magistrate's workload arises on the Fort Peck Reservation. In view of the recent interest in federal law enforcement on Indian reservations, the magistrate position at Wolf Point should be retained. Taking into account the caseload of the magistrate and his total contribution of time and services, an increase in the salary of the position to the next higher salary level appears to be warranted.

Accordingly, it is recommended that the part-time magistrate position at Wolf Point be continued for an additional four-year term of office and that the salary of the position be increased from $2,015 per annum to $3,022 per annum.

H. Cut Bank ($2,015 per annum)

Cut Bank is located just outside the Blackfeet Indian Reservation in northwestern Montana, less than 30 miles from the Canadian border. Cut Bank is approximately 110 miles northwest of Great Falls and 130 miles northeast of Kalispell.

The position was last reviewed by the Conference in March 1984, as part of the national study of all magistrate positions at the two lowest salary levels. The Conference raised the minimum salary level for part-time magistrates and increased the salary of the part-time magistrate position at Cut Bank to that level, which is currently $2,015 per annum.

The workload of the magistrate consists of initial proceedings in felony cases involving offenses committed on the Blackfeet Reservation and immigration offenses.

The workload reported by the magistrate at Cut Bank since 1980 is set forth in the following table.

	Years Ended June 30th					
	1980	1981	1982	(7mos) 1983	1984	(6mos) 1985
Misdemeanors	-	-	-	1	-	-
Petty offenses	1	-	-	1	-	-
Search warrants	1	1	1	-	-	-
Arrest warrants	14	5	2	-	1	-
Initial appearances	2	1	4	-	5	6
Bail reviews	-	1	-	-	-	-

As the table indicates, the recent workload of the position has been minimal. The position, however, serves the Blackfeet Indian Reservation and is a substantial distance from any other magistrate position. In view of the interest in federal law enforcement on Indian reservations and the need for federal magistrates at such locations, it is recommended that the part-time magistrate position at Cut Bank be retained.

Accordingly, it is recommended that the part-time magistrate position at Cut Bank be continued for an additional four-year term of office at currently authorized salary of $2,015 per annum.

III. Summary of Recommendations

Location	Current Salary	Recommendation
Butte	not applicable	$2,015+
Great Falls	$9,179	$9,179*
Kalispell	5,037	5,037*
Helena	4,030	4,030*
Missoula	3,022	3,022*
Wolf Point	2,015	3,022*
Cut Bank	2,015	2,015*

+ Authorize a new part-time magistrate position.

* Continue the position for an additional four-year term of office.

I. GEOGRAPHY

Area: 147,138 sq. miles Population: 786,690 (1980)

Principal Federal Enclaves:

National Forests: Kootenai; Flathead Lake; Lolo; Beaverhead; Gallatin; Lewis & Clark; Custer

Indian Reservations: Blackfeet; Fort Belknap; Fort Peck; Rocky Boys; Crow; Flathead Lake Northern Cheyenne;

National Wildlife Refuge Charles M. Russell

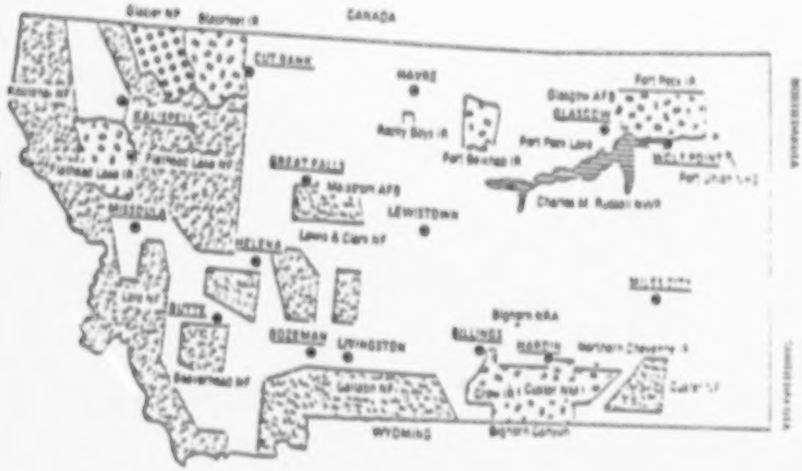
National Park: Glacier

National Recreation Area: Bighorn

National Monument: Custer

National Historic Site: Fort Union

Military: Malstrom AFB; Glasgow AFB


Glacier NP
Blackfeet IR
CANADA
CUT BANK
HAVRE
Kootenai NF
KALISPELL
Rocky Boys IR
Fort Belknap IR
Glasgow AFB
GLASGOW
Fort Peck IR
Fort Peck Lake
WOLF POINT
Fort Union NHS
Flathead Lake NF
Flathead Lake IR
GREAT FALLS
Malstrom AFB
LEWISTOWN
Charles M. Russell NWR
IDAHO
MISSOULA
Lewis & Clark NF
HELENA
Lolo NF
BUTTE
MILES CITY
Bighorn NRA
BOZEMAN
LIVINGSTON
BILLINGS
HARDIN
Northern Cheyenne IR
Beaverhead NF
Gallatin NF
Crow IR
Custer NM
Custer NF
WYOMING
Bighorn Canyon
NORTH DAKOTA
SOUTH DAKOTA

II. MAGISTRATE POSITIONS PRESENTLY AUTHORIZED

Location	Salary	Magistrate	Expiration of Current Term
Billings	$68,400	*Jack Dale Shanstrom	Jan. 23, 1991
Great Falls	9,179	Dirk H. Larsen	May 31, 1987
Kalispell	5,037	H. James Oleson	Dec. 31, 1986
Missoula	3,022	Thomas P. Murray	May 31, 1987
Wolf Point	2,015	Gerard M. Schuster	May 31, 1986
Helena	2,015	Ann Smoyer	Dec. 5, 1987
Glasgow	2,015	Gerald Archambeault	Mar. 31, 1989
Cut Bank	2,015	Wilbur P. Werner	May 31, 1987

* Legal Assistant Authorized

III. DISTRICT JUDGESHIPS

Authorized Judgeships 3**

Authorized Places of Holding Court	1980 Population	Resident Judge
Billings	66,798	1
Great Falls	56,725	1
Butte	37,205	-
Missoula	33,338	-
Helena	23,938	-
Havre	10,891	-
Kalispell	10,648	-
Miles City	9,602	-
Livington	6,994	-
Lewiston	7,104	-
Glasgow	4,455	-

** An additional judgeship was recently authorized by the Bankruptcy Amendments and Federal Judgeship Act of 1984. This position has not yet been filled.

IV. TOTAL CASELOAD OF THE DISTRICT COURT - 1984

CIVIL

	All Cases	Excluding Student Loan and Related-Type Cases	
Filed	1044	Filed	865
Terminated	892	Terminated	722
Pending	1210	Pending	1139

CRIMINAL (Felony Only)

	Cases	Defendants
Filed	163	224
Terminated	162	203
Pending	59	94

V. MEDIAN DISPOSITION TIMES - 1984

(Filing to Disposition, in Months)

	District	National Average	Standing
Criminal Cases	4.5	5.0	21
Civil Cases	9	7	70
Excluding Student Loan-Type Cases	12	9	74

ALL STATISTICS ARE FOR THE YEAR ENDED JUNE 30, 1984

VI. STATISTICAL PROFILE PER JUDGESHIP - 1984

All Cases:

	District	National Average	Standing
Authorized Judgeships	2	515	
Total Cases Filed	604	554	36
Civil Cases Filed	522	508	43
Felony Cases Filed	82	46	10
Total Weighted Caseload	5[illegible]	496	31
Total Cases Pending	635	518	24
Total Cases Terminated	527	517	54
Total Trials Completed	40	40	50

Excluding Student Loan-Type Cases: Effects of 1984 Judgeship Act

	District	National Average	Standing	District	National Average	Standing
Authorized Judgeships	2	515		3	576	
Total Cases Filed	514	464	30	343	415	77
Civil Cases Filed	432	418	39	289	374	78
Felony Cases Filed	82	46	10	54	41	19
Total Weighted Caseload	530	493	29	353	440	72
Total Cases Pending	599	482	25	399	431	5[illegible]
Total Cases Terminated	662	632	45			
Total Trials Completed	40	40	50			

ALL STATISTICS ARE FOR THE YEAR ENDED JUNE 30, 1984

MAGISTRATES WORKLOAD - DISTRICT OF MONTANA (Page 1 of 2)

TWELVE MONTH PERIOD ENDED JUNE 30, 1984	Billings P/T	Great Falls P/T	(11 mos.) Kalispell P/T	(6mos.) Missoula P/T	(6mos.) Butte P/T	Wolf Point P/T
MISDEMEANORS-TOTAL	NO REPORTS RECEIVED	-	-	-	-	-
Other						
Dismissed/Acquitted		-	-	-	-	-
Convicted		-	-	-	-	-
Total Trials		-	-	-	-	-
PETTY OFFENSES-TOTAL		275	67	12	2	2
Traffic		184	12	3	-	1
Drunk/Disorderly		37	1	-	-	-
Trespass		19	9	2	1	-
Hunt/Fish/Camping		13	-	2	-	-
Other		22	25	5	1	1
Dismissed/Acquitted		191	5	-	-	-
Convicted		84	62	12	2	2
Total Trials		25	7	-	-	-
PRELIMINARY PROCEEDINGS		64	1	5	5	24
Search Warrants		2	-	1	-	-
Arrest Warrants		8	-	1	1	13
Initial Appearances		12	-	3	4	11
Material Witnesses		-	-	-	-	-
Bail Reviews		-	1	-	-	-
Preliminary Exams		4	-	-	-	-
Grand Jury Returns		-	-	-	-	-
Arraignments		38	-	-	-	-
Inspection Warrants		-	-	-	-	-
IRS Enforcement		-	-	-	-	-
All Other		-	-	-	-	-
ADDITIONAL DUTIES		-	-	-	-	-
CRIMINAL						
Motions §636(b)(1)(A)		-	-	-	-	-
Motions §636(b)(1)(B)		-	-	-	-	-
Pretrial Conferences		-	-	-	-	-
Calendar Calls		-	-	-	-	-
Evidentiary Hearings		-	-	-	-	-
All Other Criminal		-	-	-	-	-
PRISONER LITIGATION						
State Habeas Petitions		-	-	-	-	-
Federal Habeas Petitions		-	-	-	-	-
Prisoner Civil Rights		-	-	-	-	-
Evidentiary Hearings		(-)	(-)	(-)	(-)	(-)
CIVIL						
Motions §636(b)(1)(A)		-	-	-	-	-
Motions §636(b)(1)(B)		-	-	-	-	-
Social Security		-	-	-	-	-
Pretrial Conferences		-	-	-	-	-
Calendar Calls		-	-	-	-	-
Evidentiary Hearings		-	-	-	-	-
Special Masterships		-	-	-	-	-
All Other Civil		-	-	-	-	-
CIVIL CASES ON CONSENT		-	-	-	-	-
Nonjury Trials		-	-	-	-	-
Jury Trials		-	-	-	-	-
[illegible] Trials		-	-	-	-	-
TOTAL - ALL MATTERS		339	68	17	11	26

MAGISTRATES WORKLOAD - DISTRICT OF MONTANA (Page 2 of 2)

TWELVE MONTH PERIOD ENDED JUNE 30, 1984	(6mos.) Helena P/T	Glasgow P/T	Bozeman P/T	Cut Bank P/T	Total
MISDEMEANORS-TOTAL	-	1	-	-	1
Other	-	1	-	-	1
Dismissed/Acquitted	-	-	-	-	-
Convicted	-	1	-	-	1
Total Trials	-	-	-	-	-
PETTY OFFENSES-TOTAL	11	1	1	-	321
Traffic	-	-	-	-	160
Drunk/Disorderly	-	-	-	-	38
Trespass	1	-	-	-	52
Hunt/Fish/Camping	1	1	1	-	19
Other	9	-		-	52
Dismissed/Acquitted	8	-	1	-	175
Convicted	3	1	-	-	146
Total Trials	2	-	1	-	35
PRELIMINARY PROCEEDINGS	19	10	1	6	139
Search Warrants	2	-	1	-	4
Arrest Warrants	7	3	-	1	23
Initial Appearances	8	5	-	5	68
Material Witnesses	-	-	-	-	-
Bail Reviews	2	-	-	-	3
Preliminary Exams	-	2	-	-	6
Grand Jury Returns	-	-	-	-	-
Arraignments	-	-	-	-	35
Inspection Warrants	-	-	-	-	-
IRS Enforcement	-	-	-	-	-
All Other	-	-	-	-	-
ADDITIONAL DUTIES	-	-	-	-	-
CRIMINAL					
Motions §636(b)(1)(A)	-	-	-	-	-
Motions §636(b)(1)(B)	-	-	-	-	-
Pretrial Conferences	-	-	-	-	-
Calendar Calls	-	-	-	-	-
Evidentiary Hearings	-	-	-	-	-
All Other Criminal	-	-	-	-	-
PRISONER LITIGATION					
State Habeas Petitions	-	-	-	-	-
Federal Habeas Petitions	-	-	-	-	-
Prisoner Civil Rights	-	-	-	-	-
Evidentiary Hearings	(-)	(-)	(-)	(-)	(-)
CIVIL					
Motions §636(b)(1)(A)	-	-	-	-	-
Motions §636(b)(1)(B)	-	-	-	-	-
Social Security	-	-	-	-	-
Pretrial Conferences	-	-	-	-	-
Calendar Calls	-	-	-	-	-
Evidentiary Hearings	-	-	-	-	-
Special Masterships	-	-	-	-	-
All Other Civil	-	-	-	-	-
CIVIL CASES ON CONSENT	-	-	-	-	-
Without Trial	-	-	-	-	-
Jury Trial	-	-	-	-	-
Nonjury Trial	-	-	-	-	-
TOTAL - ALL MATTERS	30	12	2	6	461

MAGISTRATES WORKLOAD - DISTRICT OF MONTANA (Page 1 of 2)

TWELVE MONTH PERIOD ENDED JUNE 30, 1983	(5 mos.)* Billings P/T	(6 mos.)* Billings P/T	(11 mos.) Great Falls P/T	(11 mos.) Kalispell P/T	Missoula P/T	(9 mos.) Butte P/T
MISDEMEANORS-TOTAL	NO REPORTS RECEIVED	-	-	-	1	-
Hunt/Fish/Camping....		-	-	-	1	-
Theft................		-	-	-	-	-
Dismissed/Acquitted..........		-	-	-	-	-
Convicted..............		-	-	-	1	-
Total Trials		-	-	-	-	-
PETTY OFFENSES-TOTAL		4	183	32	17	13
Traffic..............		4	87	7	-	-
Trespass.............		-	47	4	3	-
Drunk/Disorderly....		-	32	1	-	-
Hunt/Fish/Camping...		-	2	8	3	-
Other................		-	15	12	11	13
Dismissed/Acquitted..........		-	95	5	2	4
Convicted..............		4	88	27	15	9
Total Trials		-	10	5	3	6
PRELIMINARY PROCEEDINGS		14	75	2	18	5
Search Warrants		2	2	-	6	-
Arrest Warrants		7	7	-	6	-
Initial Appearances		5	6	2	5	5
Material Witnesses		-	-	-	-	-
Bail Reviews		-	2	-	-	-
Preliminary Exams		-	5	-	1	-
Grand Jury Sessions		-	-	-	-	-
Arraignments		-	53	-	-	-
Inspection Warrants		-	-	-	-	-
IRS Enforcement		-	-	-	-	-
All Other		-	-	-	-	-
ADDITIONAL DUTIES		20	20	-	-	-
CRIMINAL						
Motions §636(b)(1)(A)		-	-	-	-	-
Motions §636(b)(1)(B)		-	-	-	-	-
Pretrial Conferences		-	-	-	-	-
Calendar Calls		-	-	-	-	-
Evidentiary Hearings		-	-	-	-	-
All Other Criminal		-	-	-	-	-
PRISONER LITIGATION						
State Habeas Petitions		10	12	-	-	-
Federal Habeas Petitions		-	-	-	-	-
Prisoner Civil Rights		10	8	-	-	-
Evidentiary Hearings		(-)	(-)	(-)	(-)	(-)
CIVIL						
Motions §636(b)(1)(A)		-	-	-	-	-
Motions §636(b)(1)(B)		-	-	-	-	-
Social Security		-	-	-	-	-
Pretrial Conferences		-	-	-	-	-
Calendar Calls		-	-	-	-	-
Evidentiary Hearings		-	-	-	-	-
Special Masterships		-	-	-	-	-
All Other Civil		-	-	-	-	-
CIVIL CASES ON CONSENT		-	-	-	-	-
Without Trial		-	-	-	-	-
Jury Trial		-	-	-	-	-
Nonjury Trial		-	-	-	-	-
TOTAL - ALL MATTERS		38	278	34	36	18

*The Billings position was converted to full-time on January 24, 1983.

MAGISTRATES WORKLOAD - DISTRICT OF MONTANA (Page 2 of 2)

TWELVE MONTH PERIOD ENDED JUNE 30, 1983	Wolf Point P/T	Helena P/T	Glasgow P/T	Bozeman P/T	Cut Bank P/T	(2 mos.) Miles City* P/T	TOTAL
MISDEMEANORS-TOTAL	-	N	2	-	1	-	4
Hunt/Fish/Camping....	-	O	2	-	-	-	3
Theft................	-		-	-	1	-	1
		R					
		E					
		P					
Dismissed/Acquitted	-	O	-	-	1	-	1
Convicted................	-	R	2	-	-	-	3
Total Trials	-	T	-	-	-	-	-
PETTY OFFENSES-TOTAL	3	S	2	-	1	1	256
Traffic..............	1		-	-	-	-	99
Trespass.............	-	R	-	-	-	-	54
Drunk/Disorderly.....	-	E	-	-	-	-	33
Hunt/Fish/Camping....	2	C	2	-	-	-	17
Other................	-		-	-	1	1	53
		E				-	
		I					
Dismissed/Acquitted........	-	V	-	-	1	-	107
Convicted	3		2	-	-	1	149
Total Trials	-	E	2	-	-	-	26
PRELIMINARY PROCEEDINGS	42	D	3	3	-	-	162
Search Warrants	-		-	3	-	-	13
Arrest Warrants	28		3	-	-	-	51
Initial Appearances	14		-	-	-	-	37
Material Witnesses	-		-	-	-	-	-
Bail Reviews	-		-	-	-	-	2
Preliminary Exams	-		-	-	-	-	6
Grand Jury Sessions	-		-	-	-	-	-
Arraignments	-		-	-	-	-	53
Inspection Warrants	-		-	-	-	-	-
IRS Enforcement	-		-	-	-	-	-
All Other	-		-	-	-	-	-
ADDITIONAL DUTIES	-		-	-	-	-	40
CRIMINAL							
Motions §636(b)(1)(A).......	-		-	-	-	-	-
Motions §636(b)(1)(B).......	-		-	-	-	-	-
Pretrial Conferences	-		-	-	-	-	-
Calendar Calls..............	-		-	-	-	-	-
Evidentiary Hearings	-		-	-	-	-	-
All Other Criminal	-		-	-	-	-	-
PRISONER LITIGATION							
State Habeas Petitions	-		-	-	-	-	22
Federal Habeas Petitions	-		-	-	-	-	-
Prisoner Civil Rights	-		-	-	-	-	18
Evidentiary Hearings	(-)		(-)	(-)	(-)	(-)	(-)
CIVIL							
Motions §636(b)(1)(A)......	-		-	-	-	-	-
Motions §636(b)(1)(B).......	-		-	-	-	-	-
Social Security	-		-	-	-	-	-
Pretrial Conferences..........	-		-	-	-	-	-
Calendar Calls............	-		-	-	-	-	-
Evidentiary Hearings	-		-	-	-	-	-
Special Masterships	-		-	-	-	-	-
All Other Civil	-		-	-	-	-	-
CIVIL CASES ON CONSENT	-		-	-	-	-	-
Without Trial...............	-		-	-	-	-	-
Jury Trial................	-		-	-	-	-	-
Nonjury Trial	-		-	-	-	-	-
TOTAL - ALL MATTERS	45		7	3	2	1	462

*Discontinued 5/31/83.

United States District Court
District of Montana
Billings, Montana 59103

Chambers of
James F. Battin
Chief Judge
Post Office Box 1476

January 22, 1985

Duane R. Lee, Chief
Magistrates Division
Administrative Office of
the United States Courts
Washington, D.C. 20544

Dear Mr. Lee:

You will recall that the Magistrate's position in Butte, Montana was terminated and this was done within a relatively short time after a new Magistrate had been appointed.

Since that time we have been experiencing difficulties in the area.

At one point, a state district court judge submitted two bills totalling $800 for an appearance before him, which ordinarily would be handled by a Magistrate. The bills are not paid, but we still have a difficult situation.

I am enclosing herewith a letter from the United States Attorney for the District of Montana, outlining some of the problems their office is experiencing.

I request that we take steps to reinstate the Magistrate in Butte so that the operation of the Court may proceed in a somewhat functioning way.

May I hear from you?

Sincerely,

James F. Battin

James F. Battin
Chief Judge
District of Montana

Enclosure (1)

U.S. Department of Justice

United States Attorney
District of Montana

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

Post Office Box 1478
Billings, Montana 59103

406/657-6101
FTS/585-6101

December 13, 1984

DEC 14 1984

Judge James F. Battin
P. O. Box 1476
Billings, Montana 59103

RE: Need for a part time Magistrate - Butte, Montana

Dear Judge Battin:

Subsequent to our prior conversations regarding the lack of a Magistrate in Butte, Montana, a number of things have been brought to my attention. I had previously felt that we could probably manage utilizing District Court Judges and transportation to where a Magistrate was available. However, following my discussions with various affected agencies and persons, including my Assistant U.S. Attorney in Butte, the U.S. Marshal, Court Clerk and the FBI, I am convinced that this position of part time Magistrate should be filled.

My comments will be based upon 1) interviews of persons involved and; 2) specific monetary problems.

Senior Judge, William D. Murray, has made it clear that he is not to be used in handling Magistrate functions: initial appearance of Richard Angelo Calabrese and Carol Ann Calabrese, who had been arrested late Friday November 2, 1984, and were to appear for preliminary appearance at 10:00 a.m., November 5, 1984, in Butte. Judge Murray advised just prior to the scheduled hearing that he would not do Magistrate's work and it would be necessary to look elsewhere. As it was necessary to comply with the Federal Rules of Criminal Procedure, arrangements were made for State District Court Judge Mark Sullivan on that date. Judge Sullivan readily obliged with the preliminary appearance. However, as Rule 5 is specific that a State District Judge cannot acknowledge the signature on a complaint, it was still necessary that the Calabreses be brought before a U.S. Magistrate as quickly as possible. This resulted in numerous phone calls, conferences and other attempts to locate a Magistrate. Unfortunately, our final approach to the matter was that a plane was chartered to bring full time Magistrate Jack Shanstrom from Missoula to Butte by chartered aircraft.

This, of course, was at an exceptional cost. In addition, while Judge Shanstrom was most obliging, it certainly is an unfair imposition to take him from an extremely crowded calendar to travel to Butte for a preliminary appearance which could have been handled by a part time Magistrate.

Deputy U.S. Marshal assigned to Butte has advised that he has had to transport numerous individuals to Helena and other areas requiring extensive man hours and mileage. His records do not allow a cost study, but he estimates a "substantial" increase in costs due to the unavailability of a Magistrate in Butte. He further stated that there are numerous Forest Service misdemeanors causing a great deal of problems in the transportation of suspects and witnesses.

Deputy Clerk of Court Doreen Hugo and her staff are concerned about the problem of Magistrate and the extra work hours it has caused them. Her main concern, however, is that transcript and papers are not uniform or certain and that cases may be lost because of the inexperience of alternate courts, particularly State District Court Judges.

While State District Court Judge Mark Sullivan has been obliging, he has indicated that he does not desire to take any more preliminary appearance matters or U.S. Magistrate matters because they are overloading his already crowded docket.

FBI agents contacted have indicated considerable inconvenience by there not being a Magistrate in the headquarters of the FBI.

I will now try to justify through a review of the criminal dockets from October 11, 1984, through November 30, 1984, specific cases and costs incurred due to the unavailability of a Magistrate in Butte.

CR 84-5-BU, Hellman, CR 84-5-BU(2) Jelle

These bank robbers were afforded preliminary appearance in Helena due to the lack of a Magistrate in Butte. Helena attorneys were appoited to defend. Then with appearance in Butte, Butte attorneys had to also be appointed. Estimated cost - $500 - $1,000.

CR 84-6-BU Chelini

Subject arraigned before State District Judge Mark Sullivan. Extra costs are pending, Judge Sullivan and his court reporter are going to submit bills. This anticipates certain problems as there is no established mechanism to pay these bills under the Criminal Justice Act. Estimated court reporter costs - $100, estimated Judge costs - $150.

CR 84-7-BU, CR 84-8-BU, CR 84-9-BU, eight defendants

Lacey Act cases handled in Billings, preliminary appearance could have been before a Magistrate in Butte. At the present time I cannot make a reliable cost estimate.

CR 84-10-BU O'Hara

District Judge Tom Olson handled in absence of a Magistrate in Bozeman, Montana. O'Hara was required to appear in Great Falls rather than Butte. No transcript of the proceedings was kept and this could cost us the case. Estimated costs to Great Falls - unknown, estimated Judge costs - $150. Our biggest problem being that we may lose the case.

CR 84-11-BU(1) Overbay, CR 84-11-BU(2) Schwartz

These defendants appeared before District Judge Olson, a transcript was made on Overbay but none has yet been located on Schwartz. Estimated Judge costs - $200, court reporter - $100. Again, lack of transcript may cost us the case.

CR 84-12-BU Logan

Logan, when returned to Montana, should have appeared in front of a U.S. Magistrate in Butte, none being available, this was not possible, cannot estimate the cost.

CR 84-12-BU Calabrese, et al.

Previously commented on, I have not received cost of the charter from Missoula to Butte but I'm sure we will pay dearly.

Miscellaneous filing:

Robert Percy Williams, an alleged incompetent who incidentally threatened the President and assaulted a Secret Service officer before a preliminary appearance. Cost of court reporter - $100, District Judge - $150.

Multiple Misdemeanors:

Mostly Forest Service, Postal, etc., transporting to Helena and elsewhere of witnesses, cost estimate $1,000.

There has been some discussion of the part time Magistrate in Helena travelling to Butte and Bozeman each one day a month to try to alleviate the problem, particularly in the misdemeanor area. The estimated travel cost would be $120.

- In comparing the above difficulties and estimated cost with the modest salary of a part time Magistrate, it appears most cost effective to have a part time Magistrate reappointed in Butte, Montana.

Sincerely,

Pete Dunbar

PETE DUNBAR
United States Attorney

PD:bh

SURVEY OF MAGISTRATE POSITIONS
ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

DISTRICT OF MONTANA

December 1983

I. SYNOPSIS

The part-time magistrate positions at Wolf Point, Glasgow, Helena, Butte, Bozeman and Cut Bank are being reviewed as part of a special national study of all part-time magistrate positions at the two lowest salary levels. (A brief discussion of the study is attached to this report.)

For the reasons set forth below, this report recommends that the part-time magistrate positions at Wolf Point, Glasgow, Helena and Cut Bank be retained and that the positions at Butte and Bozeman be discontinued. The report also recommends continuation of the part-time magistrate position at Glasgow, which is due to expire on June 2, 1985, for an additional four-year term of office at the present salary of $1,872 per annum.

The report also concludes that the salaries of the part-time magistrate positions at Wolf Point and Cut Bank should be raised to the next higher salary levels of $2,808 per annum and $1,872 per annum, respectively, and that the salary of the part-time position at Helena should be reviewed within one year of the appointment of the new magistrate at that location.

II. WORKLOAD OF THE DISTRICT COURT

The District of Montana has two authorized judgeships. One judge resides at Billings and the other judge resides at Great Falls. There are also three senior judges in the district. The two active judges travel extensively in the district, holding court at Billings, Great Falls, Butte, Missoula and Helena.

During the year ended June 30, 1983*, there were 1,021 cases filed in the district - 860 civil cases and 161 felony prosecutions. There were 855 cases terminated during the year, and the court's pending caseload stood at 1,131 on June 30, 1983.

The civil actions filed in the district in 1983 included 110 student-loan and related government contract enforcement cases. Such cases require very little judgeship time and are weighted accordingly in the computation of national averages. Therefore, to reflect more accurately the workload of the district courts, statistics have also been prepared which exclude student-loan type cases. These statistics are used in the per-judgeship table below.

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* Unless otherwise noted, all statistics in this report are based on the twelve month period ending June 30th of each year.

Excluding student-loan and related government contract enforcement cases, there were 911 cases filed in the district during the year ended June 30, 1983 - 750 civil cases and 161 felony prosecutions. There were 724 cases terminated during the year, and the court's pending caseload stood at 1,054 on June 30, 1983.

Excluding the student loan-type cases, the court's 1983 per-judgeship caseload exceeded the national average in total cases filed (455 v. 437), felony cases filed (80 v 47), cases pending (527 v 449) and trials completed (52 v 41) as shown in the following table.

	DISTRICT	NATIONAL AVERAGE	NATIONAL STANDING
Autorized Judgeships	2	515	
Total Cases Filed	455	437	44
Civil Cases Filed	375	390	55
Felony Cases Filed	80	47	13
Total Weighted Caseload	461	470	45
Total Cases Terminated	361	392	59
Total Cases Pending	527	449	25
Total Trials Completed	52	41	29
MEDIAN DISPOSITION TIMES (Filing to Disposition, in Months)			
Crimnial Cases	4.9	4.9	47
Civil Cases	14	9.0	85

III. WORKLOAD OF THE MAGISTRATES

A. Background

Eleven part-time magistrate positions were authorized for the District of Montana during the national survey of magistrate positions in 1970. A twelfth part-time position was authorized at Bozeman in October 1982. Two part-time positions were eventually discontinued and the part-time magistrate position at Billings was converted by the Conference in March 1982 to full-time status.

The full-time magistrate was appointed on January 24, 1983. He performs a full range of duties for the court and is used extensively to conduct civil trials with the consent of the parties at the five active places of holding court.

In addition to the full-time magistrate, the district is currently served by nine part-time magistrate positions located throughout the district. A complete list of the positions and their respective workloads can be found in the attached court profile.

B. Special Considerations

Montana is the fourth largest state geographically and the second largest judicial district in the country, covering 147,138 square miles. There are seven Indian reservations, seven national forests and seven other federal enclaves located within the district.

Travel between the various cities in the state is impeded by: (a) the mountainous terrain of much of the state; (b) the severity of the winters; and (c) the general lack of convenient public transportation.

In explaining the justification for the large number of part-time magistrate positions in Montana, the attached memorandum which was submitted by the chief judge notes that:

> At the time that the Magistrate's system was created in Montana, it was thought that a relatively large number of part-time magistrates would be the answer to providing judicial services to such a vast area and it seems to us that this is still the best way. But, if it is the preference of the Judicial Conference that these part-time magistrates be eliminated, the District of Montana would be much more difficult to handle in terms of transportation of prisoners, obtaining signatures on search warrants, arrest warrants and conducting appearances. It is hard to project just what problems may arise but the elimination of all of these six magistrate positions would most certainly create speedy trial problems for us.

In addition, several of the magistrates serve at or near the various Indian reservations in the district. Over the past few years, there has been a great deal of interest in the Congress and in the Department of Justice regarding federal law enforcement on Indian reservations and the need for federal magistrates at such locations.

In cooperation with this study, the court has explored various alternatives to its low salaried magistrate positions. The full-time magistrate, who is a former state court judge, personally contacted many state judicial officers to determine their availability to conduct occasional federal proceedings in accordance with 18 U.S.C. § 3041 and rules 3, 4, and 5 of the Federal Rules of Criminal Procedure, in the event the part-time magistrate positions are eliminated. The availability of state court judges will be discussed later, wherever applicable. The court has also made arrangements with the United States attorney for the full-time magistrate to issue telephone search warrants for those areas where part-time magistrates are not available.

C. Full-Time Alternative to Part-Time Positions

In a letter attached to this report the chief judge has stated that he "would be willing to recommend terminating all part-time positions in the $936.00 to $1,872.00 per annum range, with the exception of the Wolf Point position, on the condition that the District of Montana obtains authority for a second full-time magistrate position."

Such action would be consistent with the statutory preference for a system of full-time magistrates. 28 U.S.C. § 633(a)(3). The workloads of the five part-time positions which would be eliminated are minimal, however, and together would not occupy a magistrate on a full-time basis. In reviewing the need for an additional full-time magistrate position, it would also be necessary to take into account the workload and locations of the other magistrate positions in the district and the availability of sufficient work which the judges are willing to assign to a second full-time magistrate.

It appears premature, however, to recommend a second full-time magistrate position for the district at this time. Although the court's caseload has increased and, on a per-judgeship basis, exceeded the national average in total cases filed in 1983, it does not appear to have reached the point where it requires the assistance of two full-time magistrates to serve two judges. Moreover, there has not been a sufficient period of experience with the district's first full-time magistrate position to fully assess the court's need for additional magistrate resources. Although he is used extensively to perform a full range of duties, the magistrate has not filed any monthly statistical reports since he was appointed on January 24, 1983.

D. Wolf Point ($1,872 per annum)

Wolf Point is located in northeastern Montana on the Fort Peck Indian Reservation, approximately 30 miles west of the tribal headquarters at Poplar. Wolf Point is approximately 50 miles east of the magistrate position at Glasgow, and 300 miles from any other magistrate position in the district.

The chief judge reported that the Wolf Point area generates approximately 70 percent of the criminal litigation in Montana. The judge also reported that the U.S. marshal's office has indicated that there were 185 appearances before the Wolf Point magistrate in 1982.

The workload reported by the magistrate at Wolf Point since 1979 is set forth in the following table.

	YEARS ENDED JUNE 30TH				
	1979	(10mos) 1980	(9mos) 1981	(9mos) 1982	1983
Misdemeanors	2	-	-	1	-
Petty Offenses	5	-	1	5	3
(No. of Trials)	(1)	(-)	(1)	(5)	(-)
Search Warrants	-	-	-	-	-
Arrest Warrants	5	9	14	16	20
Initial Appearances	3	10	7	8	14
Bail Reviews	3	-	-	-	-
Preliminary Examinations	1	1	-	-	-

The magistrate reports that the Fort Peck tribal officials have supported the presence of a United States magistrate on the reservation. In view of the workload and the area served by the magistrate, it is recommended that the position be retained.

The chief judge has requested an increase in the annual salary of the position to either $2,808 or $4,680. Based upon the workload of the position reported above, an increase to $2,808 per annum is recommended at this time.

E. Glasgow ($1,872 per annum)

As already noted, Glasgow is approximately 50 miles west of Wolf Point. The next closest magistrate position is 280 miles away at Great Falls.

The magistrate at Glasgow reports that a majority of defendants who appear before him are Indian tribal members charged with felony offenses. The magistrate serves the

Fort Belknap Indian Reservation, which is approximately 110 miles west of Glasgow. He also serves the Fort Peck Indian Reservation when the magistrate at Wolf Point is unavailable. The Fort Peck Reservation is less than 15 miles from Glasgow.

The workload reported by the magistrate at Glasgow since 1979 is set forth in the following table.

	YEARS ENDED JUNE 30TH				
	1979	1980	1981	1982	1983
Misdemeanors	-	3	1	-	2
(No. of Trails)	(-)	(-)	(1)	(-)	(-)
Petty Offenses	17	27	2	4	2
(No. of Trials)	(4)	(1)	(-)	(2)	(2)
Search Warrants	1	-	-	1	-
Arrest Warrants	4	7	5	10	3
Initial Appearances	2	6	6	6	-
Preliminary Exams	-	2	2	3	-
All Other	-	-	1	1	-

Although the magistrate is located 50 miles from the magistrate position at Wolf Point, the inclement weather and hazardous driving conditions in the area during the winter months have been the primary reasons for maintaining both positions in the past.

Glasgow is also 50 miles closer to the Fort Belknap Indian Reservation. The arresting officers who appear before the magistrate are Bureau of Indian Affairs officers from the reservation and two special agents of the FBI whose office and residences are in Glasgow. If the magistrate position at Glasgow is eliminated, the nearest magistrate position to the Fort Belknap Reservation would be 160 miles away at Wolf Point.

In view of the isolated area served by the magistrate and the backup assistance provided to the magistrate at Wolf Point, it is recommended that the part-time magistrate position at Glasgow, which is due to expire on June 2, 1985, be continued for an additional four-year term of office. Based upon the recent workload of the magistrate, it is further recommended that the salary of the position be retained at the current level of $1,872 per annum.

F. Butte ($1,872 per annum)

Butte is located in the southwestern portion of the district approximately 65 miles south of Helena and 83 miles west of Bozeman. The area served by the magistrate includes several national forests.

The magistrate position at Butte was last reviewed by the Conference in March 1982 and continued for an additional four-year term of office. Based upon the workload of the position, however, the salary was reduced from $3,600 per annum to the current level of $1,872 per annum.

The former magistrate was not reappointed when his term expired on April 24, 1983. The position was vacant until the incumbent was appointed on September 1, 1983.

The workload reported by the magistrate at Butte since 1979 is set forth in the following table.

	YEARS ENDED JUNE 30TH				
	1979	1980	1981	1982	(9mos) 1983
Misdemeanor	1	-	-	1	-
Petty Offenses	4	6	4	19	13
(No. of Trials)	(-)	(2)	(1)	(8)	(6)
Search Warrants	3	3	1	-	-
Arrest Warrants	6	4	8	9	-
Initial Appearances	2	4	-	5	5
Other Preliminary Proceedings	-	-	1	2	-

As the table indicates, there is a sufficient volume of work performed by the magistrate at Butte to justify continuing the position. There are a few alternatives, however, which make it possible to eliminate the position.

The full-time magistrate visits Butte at least once a month in the performance of his civil case duties. The petty offense docket at Butte could be scheduled to coincide with his visit. The magistrate has indicated he would be able to handle the small petty offense caseload at Butte under this arrangement. He also indicated that state judges at Butte would be available to handle occasional proceedings in felony cases in the absence of a resident magistrate. If the position is eliminated the nearest United States magistrate would be 65 miles away at Helena.

The court is of the view that the part-time magistrate position at Butte should be retained.

Under the circumstances indicated above, however, it is recommended that the part-time magistrate position at Butte be discontinued effective September 30, 1984, after the incumbent has completed one year in office.

G. Helena ($1,872 per annum)

Helena, the state capital, is located in western Montana approximately 65 miles north of Butte and 90 miles south of Great Falls. The area served by the magistrate at Helena includes several national forests.

The magistrate position at Helena was last reviewed by the Conference in March 1982 when it was continued for an additional four-year term of office. The former magistrate was not reappointed when his term expired on May 31, 1983. A replacement has been selected and the court is awaiting completion of the FBI and IRS background investigations.

The workload reported by the magistrate at Helena since 1979 is set forth in the following table.

	YEARS ENDED JUNE 30TH				
	1979	(10mos) 1980	1981	1982	(6mos) 1983
Misdemeanors	1	-	5	-	-
(No. of Trials)	(-)	(-)	(1)	(-)	(-)
Petty Offenses	32	32	5	55	36
(No. of Trials)	(10)	(11)	(3)	(10)	(17)
Search Warrants	-	-	1	-	-
Arrest Warants	-	29	10	-	-
Initial Appearances	-	21	7	-	-
All Other	-	2	-	-	-
Preliminary Exams	-	-	7	-	-

Due to some statistical reporting problems, there is some question whether the workload reported by the former magistrate is accurate. There does appear to be a sufficient caseload, however, to justify retaining the part-time magistrate position at Helena, particularly if the part-time magistrate position at Butte is discontinued.

Although the full-time magistrate is expected to conduct civil case proceedings at Helena on occasion, his visits to that location will be very limited. He also indicated that the state judicial officers at Helena are very busy and would not generaly be available to handle occasional preliminary federal proceedings.

Since there appears to be a sufficient need for the position and a lack of any reasonable alternatives, it is recommended that the position be retained at the currently authorized salary of $1,872 per annum. As there is some question on the extent of the workload, it is recommended that the salary of the position be reviewed within one year of the appointment of the new magistrate.

H. Bozeman ($936 per annum)

Bozeman is located in the southwest portion of Montana approximately 83 miles east of Butte, 99 miles southeast of Helena and 140 miles west of Billings. There are several national forests located in the area served by the magistrate at Bozeman.

At its September 1980 session, the Judicial Conference authorized the magistrate at Bozeman to serve in the adjoining district of Wyoming to provide "back-up" service at Yellowstone National Park. The adjoining district jurisdiction was authorized as a contingency plan because the former part-time magistrate at Yellowstone was ill at the time and was not expected to return to work. Since January 1, 1982, Yellowstone has been served by a full-time magistrate. The part-time magistrate at Bozeman has handled only a few cases from Yellowstone since 1980.

The position was last reviewed by the Conference at its September 1981 session at which time it was continued for an additional four-year term. The incumbent's current term of office is due to expire on February 28, 1986.

The workload reported by the magistrate at Bozeman since 1979 is set forth in the following table.

	YEARS ENDED JUNE 30TH				
	1979	1980	1981	1982	1983
Misdemeanors	-	2	-	-	-
Petty Offenses	21	16	6	2	-
(No. of Trials)	(2)	(4)	(1)	(-)	(-)
Search Warrants	1	-	-	-	3
Arrest Warrants	3	11	2	-	-
Initial Appearances	3	3	1	7	-
Preliminary Exams	-	1	-	-	-
Inspection Warrants	-	-	-	4	-

The full-time magistrate has indicated that State judicial officers would be available at Bozeman to handle occasional initial proceedings in felony cases in the absence of a resident magistrate. As the table indicates, the recent workload of the position is minimal and under the circumstances, does not appear to warrant continuation of the position.

Accordingly, it is recommended that the part-time magistrate position at Bozeman be discontinued, effective September 30, 1984. The court is inclined to agree with the elimination of this position.

I. Cut Bank ($936 per annum)

Cut Bank is located just outside the Blackfeet Indian Reservation in northwestern Montana, less than 30 miles from the Canadian border. Cut Bank is approximately 110 miles north of Great Falls and 130 miles northeast of Kalispell.

The position was last reviewed by the Conference in March 1982, when it was continued for an additional four-year term at its current salary level of $936 per annum. The incumbent was recently reappointed to a new term of office which expires May 31, 1987.

The workload of the magistrate consists of initial proceedings in felony cases involving offenses committed on the Blackfeet Reservation and immigration offenses.

The workload reported by the magistrate at Cut Bank since 1979 is set forth in the following table.

	YEARS ENDED JUNE 30TH				
	1979	1980	1981	1982	(7mos) 1983
Misdemeanors	-	-	-	-	1
Petty Offenses	-	1	-	-	1
Search Warrants	-	1	1	1	-
Arrest Warrants	16	14	5	2	-
Initial Appearances	1	2	1	-	-
Bail Reviews	-	-	1	4	-

As the table indicates the workload of the position recently has been minimal. The position, however, serves the Blackfeet Indian Reservation and is a substantial distance from any other magistrate position. In view of the recent interest in federal law enforcement on Indian reservations and the need for federal magistrates at such locations, it is recommended that the part-time magistrate position at Cut Bank be retained.

The Magistrates Committee is expected to recommend to the Judicial Conference that the minimum salary level of a part-time magistrate be increased from $936 per annum to $1,872 per annum.

In view of the need to retain the part-time magistrate position at Cut Bank, it is recommended that the salary of the position be adjusted to the proposed new minimum level of $1,872 per annum.

IV. SUMMARY OF RECOMMENDATIONS

For the reasons set forth above, it is recommended:

A. That the part-time magistrate position at Wolf Point be retained and that the salary of the position be increased from $1,872 per annum to $2,808 per annum.

B. That the part-time magistrate position at Glasgow, which is due to expire on June 2, 1985, be continued for an additional four-year term of office at the currently authorized salary of $1,872 per annum.

C. That the part-time magistrate position at Butte be discontinued effective September 30, 1984.

D. That the part-time magistrate position at Helena, be retained and that the salary of this position be reviewed within one year of the appointment of the new magistrate at that location.

E. That the part-time magistrate position at Bozeman be discontinued effective September 30, 1984.

F. That the part-time magistrate position at Cut Bank be retained and that the salary of the position be increased from $936 per annum to $1,872 per annum.

SPECIAL STUDY OF ALL PART-TIME MAGISTRATE POSITIONS AT THE TWO LOWEST SALARY LEVELS

The Judicial Conference Committee on the Administration of the Federal Magistrates System has directed the Administrative Office to conduct a special study of all part-time magistrate positions at the two lowest salary levels of $936 per annum and $1,872 per annum.

The purpose of the study is to evaluate the need to retain each of these positions. It is the view of the Magistrates Committee that the number of part-time magistrate positions can be reduced through the consolidation of positions or the elimination of positions where the caseload is negligible.

Such action is in keeping with the policy of the Congress and the Judicial Conference to limit the number of part-time magistrates in accordance with 28 U.S.C. § 633 (a)(3) to the minimum necessary to permit prompt and efficient issuance of process and to provide prompt initial appearances before a judicial officer of the United States after arrest.

The following factors will be considered by the Committee in evaluating the need for these positions: the nature and volume of the workload reported by the magistrate; the history of the position (with particular attention to any periods during which the position was vacant); the area and population served by the magistrate; local geography and travel conditions; and any other pertinent factors.

All part-time magistrates at the $936 per annum and $1,872 per annnum salary levels and their chief judges were advised of the study and asked to complete a questionnaire on the need for their respective position.

After reviewing the responses to the questionnaire, the Magistrates Committee, at its June 1983 meeting, decided not to adopt any rigid criteria to use in evaluating the need for each position. The Committee, however, established the following guidelines to assist the Administrative Office in surveying magistrate positions at the two lowest salary levels:

1) The present minimum salary level of $936 per annum should be abolished upon completion of the study;

2) Positions currently at the $936 per annum salary level should be either discontinued, or if their continued need is justified, raised to the new minimum salary level of $1,872 per annum;

3) A position should be discontinued wherever a court has indicated that such action would cause no serious difficulty;

4) Unless there is a strong showing that it is needed, a position will be discontinued if it has been vacant for 12 months or more, or if the magistrate has performed no appreciable volume of duties within the last 18 months;

5) Positions should be consolidated wherever practical.

I. GEOGRAPHY

Area: 147,138 sq. miles **Population:** 786,690 (1980)

Principal Federal Enclaves:

National Forests: Kootenai; Flathead Lake; Lolo; Beaverhead; Gallatin; Lewis & Clark; Custer

Indian Reservations: Blackfeet; Fort Belknap; Fort Peck; Rocky Boys; Crow; Flathead Lake; Northern Cheyenne;

National Widlife Refuge: Charles M. Russell

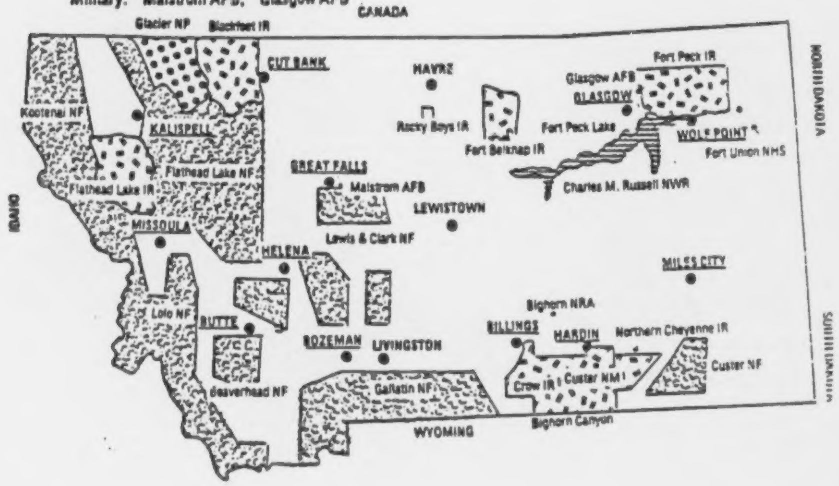
National Park: Glacier

National Recreation Area: Bighorn

National Monument: Custer

National Historic Site: Fort Union

Military: Malstrom AFB; Glasgow AFB


CANADA
Glacier NP
Blackfeet IR
CUT BANK
HAVRE
Fort Peck IR
Glasgow AFB
GLASGOW
Kootenai NF
KALISPELL
Rocky Boys IR
Fort Belknap IR
Fort Peck Lake
WOLF POINT
Fort Union NHS
NORTH DAKOTA
Flathead Lake NF
Flathead Lake IR
GREAT FALLS
Malstrom AFB
Charles M. Russell NWR
IDAHO
MISSOULA
LEWISTOWN
Lewis & Clark NF
HELENA
MILES CITY
Bighorn NRA
Lolo NF
BUTTE
BILLINGS
HARDIN
Northern Cheyenne IR
BOZEMAN
LIVINGSTON
Custer NF
Beaverhead NF
Gallatin NF
Crow IR
Custer NM
SOUTH DAKOTA
WYOMING
Bighorn Canyon

II. MAGISTRATE POSITIONS PRESENTLY AUTHORIZED

Location	Type	Authorized Salary	Expiration of Current Term
Billings	Full-time#	$63,600	Jan. 23, 1991
Great Falls	Part-time	8,528	May 31, 1987
Kalispell	Part-time	4,680	Dec. 31, 1986
Missoula	Part-time	2,808	May 31, 1987
Butte	Part-time	1,872	Aug. 31, 1987
Wolf Point	Part-time	1,872	May 31, 1986
Helena	Part-time	1,872	Vacant
Glasgow	Part-time	1,872	Jun. 2, 1985
Bozeman	Part-time	935	Feb. 28, 1986
Cut Bank	Part-time	936	May 31, 1987

#Magistrate has been authorized a legal assistant.

III. DISTRICT JUDGESHIPS

Authorized Judgeships. 2

Authorized Places of Holding Court	City Population	Resident Judges
Billings	66,798	1
Missoula	33,388	-
Great Falls	56,725	1
Butte	37,205	-
Helena	23,938	-
Havre	10,891	-
Kalispell	10,648	-
Miles City	9,602	-
Livingston	6,994	-
Lewiston	7,104	-
Glasgow	4,455	-

IV. TOTAL CASELOAD OF THE DISTRICT COURT - 1983.

CIVIL

	Cases
Filed	860
Terminated	692
Pending	1,050

CRIMINAL (Felony only)

	Cases	Defendants
Filed	161	200
Terminated	144	178
Pending	58	73

V. STATISTICAL PROFILE PER JUDGESHIP - 1983.

	DISTRICT	NATIONAL AVERAGE	NATIONAL STANDING
Authorized Judgeships	2	515	
Total Cases Filed	510	517	55
Civil Cases Filed	430	470	65
Felony Cases Filed	80	47	13
Total Weighted Caseload	463	473	45
Total Cases Terminated	417	463	67
Total Cases Pending	558	481	31
Total Trials Completed	52	41	29
MEDIAN DISPOSITION TIMES (Filing to Disposition, In Months)			
Criminal Cases	4.9	4.9	47
Civil Cases	12	7	87

All statistics are for the year ended June 30, 1983.

IV. TOTAL CASELOAD OF THE DISTRICT COURT - 1983.

CIVIL	Cases	CRIMINAL (Felony only)	Cases	Defendants
Filed	750	Filed	161	200
Terminated	580	Terminated	144	178
Pending	996	Pending	58	73

V. STATISTICAL PROFILE PER JUDGESHIP - 1983.

	DISTRICT	NATIONAL AVERAGE	NATIONAL STANDING
Authorized Judgeships	2	515	
Total Cases Filed	455	437	44
Civil Cases Filed	375	390	55
Felony Cases Filed	80	47	13
Total Weighted Caseload	461	470	45
Total Cases Terminated	361	392	59
Total Cases Pending	527	449	25
Total Trials Completed	52	41	29
MEDIAN DISPOSITION TIMES (Filing to Disposition, In Months)			
Criminal Cases	4.9	4.9	47
Civil Cases	14	9.0	85

All statistics are for the year ended June 30, 1983.

STATISTICAL PROFILE DISTRICT OF MT......

NATURE OF SUIT	12 MONTH PERIOD ENDING JUNE 30TH				
	1979	1980	1981	1982	1983
TOTAL CIVIL CASES........	471	590	671	783	860
U.S. CASES, TOTAL........	180	256	224	308	302
CONTRACT.................	67	151	101	140	124
LAND CONDEMNATION........	10	9	4	33	15
OTHER REAL PROPERTY......	23	27	21	32	49
TORT ACTIONS.............	12	13	15	16	7
ANTITRUST................	-	1	-	-	-
CIVIL RIGHTS.............	5	4	7	7	3
PRISONER PETITIONS:					
HABEAS CORPUS..........	-	-	-	-	-
CIVIL RIGHTS...........	-	-	-	-	2
OTHER..................	5	4	-	3	4
FORFEITURES & PENALTIES.	4	8	13	15	6
LABOR LAW SUITS..........	3	7	5	7	5
SOCIAL SECURITY..........	17	5	16	28	32
TAX SUITS................	8	9	14	13	22
NARA.....................	-	-	-	-	-
ALL OTHER U.S. CASES.....	26	18	29	14	33
PRIVATE CASES, TOTAL.....	291	334	447	475	558
CONTRACT.................	65	88	133	131	158
REAL PROPERTY............	7	10	22	24	21
F.E.L.A.	26	25	15	47	36
MARINE PERSONAL INJURY...	-	2	-	-	2
MOTOR VEHICLE P. I.	34	27	38	39	28
OTHER PERSONAL INJURY....	41	50	59	49	72
OTHER TORT ACTIONS.......	22	15	16	22	17
ANTITRUST................	4	5	2	3	4
CIVIL RIGHTS.............	27	29	22	28	31
COMMERCE.................	1	12	9	2	3
PRISONER PETITIONS:					
HABEAS CORPUS..........	19	24	29	17	37
CIVIL RIGHTS...........	10	22	47	61	89
OTHER..................	2	-	-	1	-
LABOR LAW SUITS..........	10	14	29	20	22
COPYRIGHT, PATENT, & TRADEMARK............	2	3	5	12	9
ALL OTHER PRIVATE CASES.	21	8	21	19	29

DISTRICT OF MONTANA	CASES TWELVE MONTH PERIOD ENDED JUNE 30				
	1979	1980	1981	1982	1983
TOTAL	161	151	169	151	177
APPEALS	1	1	1	2	-
MISDEMEANOR OFFENSES	8	7	7	5	10
PETTY OFFENSES	6	11	3	15	6
TRANSFERS	6	6	4	2	9
NET FILINGS	140	126	154	127	152
HOMICIDE	11	8	17	6	8
ROBBERY	2	1	3	5	-
ASSAULT	21	16	14	9	18
BURGLARY	26	17	3	22	2
LARCENY	27	24	54	28	39
EMBEZZLEMENT	3	6	10	9	8
FRAUD	15	15	12	9	27
AUTO THEFT	1	-	1	1	6
FORGERY AND COUNTERFEITING	9	10	18	7	15
MARIJUANA	1	1	-	-	-
NARCOTICS	2	-	-	2	6
CONTROLLED SUBSTANCES	5	3	2	3	2
WEAPONS AND FIREARMS	5	5	10	7	7
TRAFFIC	-	-	-	-	-
OTHER GENERAL OFFENSES	8	15	8	8	7
IMMIGRATION	1	3	1	4	2
LIQUOR, INTERNAL REVENUE	-	-	-	-	-
POSTAL LAWS	-	-	-	-	-
OTHER SPECIAL OFFENSES	3	2	1	7	5

DISTRICT OF MONTANA	DEFENDANTS TWELVE MONTH PERIOD ENDED JUNE 30				
	1979	1980	1981	1982	1983
TOTAL	182	189	209	175	217
APPEALS	1	1	2	3	-
MISDEMEANOR OFFENSES	8	8	10	7	11
PETTY OFFENSES	11	13	4	16	6
TRANSFERS	6	6	4	2	9
NET FILINGS	156	161	189	147	191
HOMICIDE	12	9	18	6	5
ROBBERY	3	3	3	7	1
ASSAULT	22	17	15	9	20
BURGLARY	26	28	5	28	4
LARCENY	32	32	69	32	51
EMBEZZLEMENT	3	6	10	9	9
FRAUD	15	16	15	9	24
AUTO THEFT	1	-	1	1	5
FORGERY AND COUNTERFEITING	9	11	24	11	19
MARIJUANA	1	1	-	-	-
NARCOTICS	3	-	-	5	8
CONTROLLED SUBSTANCES	7	4	2	3	3
WEAPONS AND FIREARMS	6	5	12	7	7
TRAFFIC	-	-	-	-	-
OTHER GENERAL OFFENSES	10	23	11	8	7
IMMIGRATION	1	3	1	4	4
LIQUOR, INTERNAL REVENUE	-	-	-	-	-
POSTAL LAWS	-	-	-	-	-
OTHER SPECIAL OFFENSES	5	3	3	8	8

MAGISTRATES WORKLOAD - DISTRICT OF MONTANA (Page 1 of 2)

TWELVE MONTH PERIOD ENDED JUNE 30, [illegible]	Billings P/T	Great Falls P/T	Kalispell P/T	Butte P/T	Missoula P/T	(9 mos.) Wolf Point P/T
MISDEMEANORS-TOTAL	-	-	-	1	3	1
Destroy Property....	-	-	-	-	1	1
Trespass............	-	-	-	1	-	-
Other...............	-	-	-	-	2	-
Dismissed/Acquitted	-	-	-	-	1	1
Convicted	-	-	-	1	2	-
Total Trials	-	-	-	1	1	-
PETTY OFFENSES-TOTAL	5	109	30	19	18	5
Traffic............	1	48	1	-	7	-
Trespass...........	-	27	7	1	-	-
Hunt/Fish/Camping..	2	6	11	-	5	5
Drunk/Disorderly...	-	11	-	-	-	-
Other..............	2	17	11	18	6	-
Dismissed/Acquitted	2	51	4	4	4	1
Convicted	3	58	26	15	14	4
Total Trials	-	7	4	8	7	5
PRELIMINARY PROCEEDINGS	33	33	-	15	23	24
Search Warrants	5	-	-	-	6	-
Arrest Warrants	11	4	-	9	7	16
Initial Appearances	11	5	-	5	10	8
Material Witnesses	-	-	-	-	-	-
Bail Reviews	-	-	-	-	-	-
Preliminary Exams	1	-	-	1	-	-
Grand Jury Sessions	-	1	-	-	-	-
Arraignments	1	23	-	-	-	-
Inspection Warrants	4	-	-	-	-	-
IRS Enforcement	-	-	-	-	-	-
All Other	-	-	-	-	-	-
ADDITIONAL DUTIES	35	20	-	1	-	-
CRIMINAL						
Motions-§636(b)(1)(A)	-	-	-	-	-	-
Motions-§636(b)(1)(B)	-	-	-	-	-	-
Pretrial Conferences	-	-	-	1	-	-
Calendar Calls	-	-	-	-	-	-
Evidentiary Hearings	-	-	-	-	-	-
All Other Criminal	-	-	-	-	-	-
PRISONER LITIGATION						
State Habeas Petitions	25	12	-	-	-	-
Federal Habeas Petitions	-	-	-	-	-	-
Prisoner Civil Rights	10	8	-	-	-	-
Evidentiary Hearings	(5)	(-)	(-)	(-)	(-)	(-)
CIVIL						
Motions-§636(b)(1)(A)	-	-	-	-	-	-
Motions-§636(b)(1)(B)	-	-	-	-	-	-
Social Security	-	-	-	-	-	-
Pretrial Conferences	-	-	-	-	-	-
Calendar Calls	-	-	-	-	-	-
Evidentiary Hearings	-	-	-	-	-	-
Special Masterships	-	-	-	-	-	-
All Other Civil	-	-	-	-	-	-
CIVIL CASES ON CONSENT	-	-	-	-	-	-
Without Trial	-	-	-	-	-	-
Jury Trial	-	-	-	-	-	
Nonjury Trial	-	-	-	-	-	-
TOTAL - ALL MATTERS	73	162	30	36	44	30

[illegible]

MAGISTRATES WORKLOAD - DISTRICT OF MONTANA (Page 2 of 2)

TWELVE MONTH PERIOD ENDED

JUNE 30, 1982	Helena P/T	Glasgow P/T	Bozeman P/T	Cut Bank P/T	Miles City P/T	TOTAL
MISDEMEANORS-TOTAL	NO REPORTS RECEIVED	-	-	-	-	5
Destroy Property...		-	-	-	-	2
Trespass...........		-	-	-	-	1
Other..............		-	-	-	-	2
Dismissed/Acquitted		-	-	-	-	2
Convicted		-	-	-	-	3
Total Trials		-	-	-	-	2
PETTY OFFENSES-TOTAL		4	2	-	2	194
Traffic............		-	-	-	-	57
Trespass...........		4	-	-	-	39
Hunt/Fish/Camping..		-	2	-	2	33
Drunk/Disorderly...		-	-	-	-	11
Other..............		-	-	-	-	54
Dismissed/Acquitted		2	-	-	-	68
Convicted		2	2	-	2	126
Total Trials		2	-	-	-	33
PRELIMINARY PROCEEDINGS		21	11	7	-	167
Search Warrants		1	-	1	-	13
Arrest Warrants		10	7	2	-	66
Initial Appearances		6	-	-	-	45
Material Witnesses		-	-	-	-	-
Bail Reviews		-	-	4	-	4
Preliminary Exams		3	-	-	-	5
Grand Jury Sessions		-	-	-	-	1
Arraignments		-	-	-	-	24
Inspection Warrants		-	4	-	-	8
IRS Enforcement		-	-	-	-	-
All Other		1	-	-	-	1
ADDITIONAL DUTIES		-	-	-	-	56
CRIMINAL						
Motions-§636(b)(1)(A)		-	-	-	-	-
Motions-§636(b)(1)(B)		-	-	-	-	-
Pretrial Conferences		-	-	-	-	1
Calendar Calls		-	-	-	-	-
Evidentiary Hearings		-	-	-	-	-
All Other Criminal		-	-	-	-	-
PRISONER LITIGATION						
State Habeas Petitions		-	-	-	-	37
Federal Habeas Petitions		-	-	-	-	-
Prisoner Civil Rights		-	-	-	-	18
Evidentiary Hearings		(-)	(-)	(-)	(-)	(5)
CIVIL						
Motions-§636(b)(1)(A)		-	-	-	-	-
Motions-§636(b)(1)(B)		-	-	-	-	-
Social Security		-	-	-	-	-
Pretrial Conferences		-	-	-	-	-
Calendar Calls		-	-	-	-	-
Evidentiary Hearings		-	-	-	-	-
Special Masterships		-	-	-	-	-
All Other Civil		-	-	-	-	-
CIVIL CASES ON CONSENT		-	-	-	-	-
Without Trial		-	-	-	-	-
Jury Trial		-	-	-	-	-
Nonjury Trial		-	-	-	-	-
TOTAL - ALL MATTERS		25	13	7	2	422

[illegible] MAGISTRATES WORKLOAD - DISTRICT OF MONTANA (Page 1 of 2)

TWELVE MONTH PERIOD ENDED JUNE 30, 1983	(5 mos.)* Billings F/T	(6 mos.)* Billings P/T	(11 mos.) Great Falls P/T	(11 mos.) Kalispell P/T	Missoula P/T	(9 mos.) Butte P/T
MISDEMEANORS-TOTAL	NO REPORTS RECEIVED	-	-	-	1	-
Hunt/Fish/Camping...		-	-	-	1	-
Theft................		-	-	-	-	-
Dismissed/Acquitted		-	-	-	-	-
Convicted................		-	-	-	1	-
Total Trials		-	-	-	-	-
PETTY OFFENSES-TOTAL		4	183	32	17	13
Traffic.............		4	87	7	-	-
Trespass............		-	47	4	3	-
Drunk/Disorderly....		-	32	1	-	-
Hunt/Fish/Camping...		-	2	8	3	-
Other...............		-	15	12	11	13
Dismissed/Acquitted.........		-	95	5	2	4
Convicted................		4	88	27	15	9
Total Trials		-	10	5	3	6
PRELIMINARY PROCEEDINGS		14	75	2	18	5
Search Warrants............		2	2	-	6	-
Arrest Warrants............		7	7	-	6	-
Initial Appearances		5	6	2	5	5
Material Witnesses		-	-	-	-	-
Bail Reviews..............		-	2	-	-	-
Preliminary Exams		-	5	-	1	-
Grand Jury Sessions		-	-	-	-	-
Arraignments		-	53	-	-	-
Inspection Warrants.........		-	-	-	-	-
IRS Enforcement		-	-	-	-	-
All Other................		-	-	-	-	-
ADDITIONAL DUTIES		20	20	-	-	-
CRIMINAL						
Motions §636(b)(1)(A).......		-	-	-	-	-
Motions §636(b)(1)(B).......		-	-	-	-	-
Pretrial Conferences..........		-	-	-	-	-
Calendar Calls.............		-	-	-	-	-
Evidentiary Hearings		-	-	-	-	-
All Other Criminal..........		-	-	-	-	-
PRISONER LITIGATION						
State Habeas Petitions		10	12	-	-	-
Federal Habeas Petitions......		-	-	-	-	-
Prisoner Civil Rights		10	8	-	-	-
Evidentiary Hearings.......		(-)	(-)	(-)	(-)	(-)
CIVIL						
Motions-§636(b)(1)(A).......		-	-	-	-	-
Motions-§636(b)(1)(B).......		-	-	-	-	-
Social Security		-	-	-	-	-
Pretrial Conferences..........		-	-	-	-	-
Calendar Calls.............		-	-	-	-	-
Evidentiary Hearings		-	-	-	-	-
Special Masterships		-	-	-	-	-
All Other Civil		-	-	-	-	-
CIVIL CASES ON CONSENT		-	-	-	-	-
Without Trial..............		-	-	-	-	-
Jury Trial................		-	-	-	-	-
Nonjury Trial		-	-	-	-	-
TOTAL - ALL MATTERS		38	278	34	36	18

*The Billings position was converted to full-time on January 24, 1983.

[illegible]

MAGISTRATES WORKLOAD - DISTRICT OF MONTANA

(Page 2 of 2)

TWELVE MONTH PERIOD ENDED JUNE 30, 1983	Wolf Point P/T	Helena P/T	Glasgow P/T	Bozeman P/T	Cut Bank P/T	(2 mos.) Miles City* P/T	TOTAL
MISDEMEANORS-TOTAL	-	N	2	-	1	-	4
Hunt/Fish/Camping...	-	O	2	-	-	-	3
Theft...............	-	R E P	-	-	1	-	1
Dismissed/Acquitted.........	-	O	-	-	1	-	1
Convicted.................	-	R	2	-	-	-	3
Total Trials	-	T	-	-	-	-	-
PETTY OFFENSES-TOTAL	3	S	2	-	1	1	256
Traffic.............	1	R	-	-	-	-	99
Trespass............	-		-	-	-	-	54
Drunk/Disorderly....	-	E	-	-	-	-	33
Hunt/Fish/Camping...	2	C	2	-	-	-	17
Other...............	-	E	-	-	1	1	53
Dismissed/Acquitted.........	-	I	-	-	1	-	107
Convicted.................	3	V	2	-	-	1	149
Total Trials	-	E	2	-	-	-	26
PRELIMINARY PROCEEDINGS	42	D	3	3	-	-	162
Search Warrants............	-		-	3	-	-	13
Arrest Warrants............	28		3	-	-	-	51
Initial Appearances	14		-	-	-	-	37
Material Witnesses	-		-	-	-	-	-
Bail Reviews..............	-		-	-	-	-	2
Preliminary Exams	-		-	-	-	-	6
Grand Jury Sessions	-		-	-	-	-	-
Arraignments	-		-	-	-	-	53
Inspection Warrants.........	-		-	-	-	-	-
IRS Enforcement	-		-	-	-	-	-
All Other	-		-	-	-	-	-
ADDITIONAL DUTIES	-		-	-	-	-	40
CRIMINAL							
Motions §636(b)(1)(A).......	-		-	-	-	-	-
Motions §636(b)(1)(B).......	-		-	-	-	-	-
Pretrial Conferences..........	-		-	-	-	-	-
Calendar Calls.............	-		-	-	-	-	-
Evidentiary Hearings	-		-	-	-	-	-
All Other Criminal..........	-		-	-	-	-	-
PRISONER LITIGATION							
State Habeas Petitions	-		-	-	-	-	22
Federal Habeas Petitions.......	-		-	-	-	-	-
Prisoner Civil Rights	-		-	-	-	-	18
Evidentiary Hearings.......	(-)		(-)	(-)	(-)	(-)	(-)
CIVIL							
Motions §636(b)(1)(A).......	-		-	-	-	-	-
Motions §636(b)(1)(B).......	-		-	-	-	-	-
Social Security	-		-	-	-	-	-
Pretrial Conferences..........	-		-	-	-	-	-
Calendar Calls.............	-		-	-	-	-	-
Evidentiary Hearings	-		-	-	-	-	-
Special Masterships	-		-	-	-	-	-
All Other Civil	-		-	-	-	-	-
CIVIL CASES ON CONSENT	-		-	-	-	-	-
Without Trial..............	-		-	-	-	-	-
Jury Trial................	-		-	-	-	-	-
Nonjury Trial	-		-	-	-	-	-
TOTAL - ALL MATTERS	45		7	3	2	1	462

*[illegible] 5/31/83

United States District Court
District of Montana
Billings, Montana 59101

Chambers of
James F. Battin
Chief Judge
Post Office Box 1476

June 14, 1983

The Honorable William A. Foley
Director
Administrative Office of the
 United States Courts
Washington, D. C. 20544

Dear Mr. Foley:

In response to your questionnaire concerning low-salaried part-time magistrate positions in the District of Montana, I would be willing to recommend elimination of the part-time magistrate positions in Bozeman, Cut Bank, Helena, Butte and Glasgow in exchange for another full-time magistrate position for the District of Montana.

However, it would still be advantageous and necessary to retain the part-time magistrate position in Wolf Point, Montana, in that Wolf Point is located on a remote Indian reservation approximately 300 miles from the nearest district judge or magistrate. Magistrate Schuster of Wolf Point has a fairly heavy initial apparance schedule and I would recommend an up-grade in his position to either $2,808.00 or $4,680.00.

Magistrate Shanstrom, a former state court judge and now the only full-time magistrate in the District of Montana, has personally contacted many of the state judicial officers and has learned that, in the event the part-time magistrate positions are eliminated, these state officers would be agreeable to performing the functions prescribed in 18 U.S.C. s 3041, Rules 3, 4 and 5, on an occasional basis. In addition, Magistrate Shanstrom has made arrangements with the United States Attorney for issuance of telephonic search warrants, under Rule 41(c), in those areas where part-time magistrates are not available.

Based on these considerations, I would be willing to recommend terminating all part-time magistrate positions in the $936.00 to $1,872.00 per annum range, with the exception of the Wolf Point position, on the condition the District of Montana obtains authority for a second full-time magistrate position.

Sincerely,

James F. Battin

James F. Battin
Chief Judge
District of Montana

Copy to The Honorable Otto R. Skopil, Jr.

Enclosure

TO: Administrative Office of the United
States Courts

This narrative is intended to address the question of all six part-time magistrate positions since the response would be the same in all six cases.

The primary reasons for the great number of magistrates (there has been as many as 12) in the State of Montana has been due to problems of distance, weather and time. Montana is 147,000 square miles and has a population of fewer than 800,000 people. The State contains seven Indian Reservations with a combined population of approximately 20,000, seven national forests and seven other federal enclaves. The weather in the state ranges from 100 degrees in the summer to an occasional low of -40 degrees in the winter (the lowest recorded temperature in the lower continental United States was in Montana at Rogers Pass at 70 degrees below zero.) These extremes in weather make travel in the state difficult if not dangerous. It is for the aforementioned reasons that Montana has a number of small "outposts" of federal judicial officials instead of one or two central points where the business of the courts can be conducted. At the time that the Magistrate's system was created in Montana, it was thought that a relatively large number of part-time magistrates would be the answer to providing judicial services to such a vast area and it seems to us that this is still the best way. But, if it is the preference of the Judicial Conference that these part-time magistrates be eliminated, the District of Montana would be much more difficult to handle in terms of transportation of prisoners, obtaining signatures on search warrants, arrest warrants and conducting appearances. It is hard to project just what problems may arise but the elimination of all of these six magistrate positions would most certainly create speedy trial problems for us.

The District of Montana would like to think in terms of consolidation instead of elimination. Due to the great criminal case load generated by the Wolf Point area, the magistrate in that town would be a necessity. There were about 185 appearances before this magistrate during 1982. The other five magistrate positions could be eliminated if we were to be alloted another full-time magistrate position. If a full-time position were to be approved, that position could possibly be located in a central place where travel by F.B.I. and U. S. Marshals would be lessened.

MAGISTRATES WORKLOAD - MONTANA

(Page 1 of 6)

TWELVE MONTH PERIOD ENDING JUNE 30, 1985`	Billings 1 F/T	Butte 1 P/T (0%)*	Glasgow 1 P/T (16%)*	Great Falls 1 P/T
MISDEMEANORS TOTAL	0	0	0	0
Traffic	0	0	0	0
Theft	0	0	0	0
Food/Drug	0	0	0	0
Weapons	0	0	0	0
Trespass	0	0	0	0
Mail	0	0	0	0
Assault	0	0	0	0
Fraud	0	0	0	0
Other	0	0	0	0
Dismissed/Acquitted	0	0	0	0
Convicted	0	0	0	0
Total Trials	(0)	(0)	(0)	(0)
PETTY OFFENSES TOTAL	21	0	1	175
Traffic	8	0	0	134
Immigration	0	0	0	0
Food/Drug	0	0	0	0
Mail	0	0	0	1
Drunk/Disorderly	3	0	0	14
Hunt/Fish/Camp	3	0	0	4
Trespass	2	0	0	10
Theft	1	0	0	1
Other	4	0	1	3
Dismissed/Acquitted	4	0	1	107
Convicted	17	0	0	68
Total Trials	(5)	(0)	(0)	(19)
PRELIMINARY PROCEEDINGS	78	0	0	73
Search Warrants	20	0	0	5
Arrest Warrants	4	0	0	2
Initial Appearance	26	0	0	42
Material Witnesses	0	0	0	0
Detention Hearings	1	0	0	0
Bail Reviews	2	0	0	2
Preliminary Exams	6	0	0	4
Grand Jury Sessions	0	0	0	0
Arraignments	7	0	0	18
Judgment Debtors	0	0	0	0
Inspection Warrants	6	0	0	0
IRS Enforcement	0	0	0	0
All Other	6	0	0	0

MAGISTRATES WORKLOAD - MONTANA

(Page 2 of 6)

TWELVE MONTH PERIOD ENDING JUNE 30, 1985	Billings 1 F/T	Butte 1 P/T (0%)*	Glasgow 1 P/T (16%)*	Great Falls 1 P/T
ADDITIONAL DUTIES	239	0	0	0
CRIMINAL				
Motions-636(b)(1)(A)........	0	0	0	0
Motions-636(b)(1)(B)........	0	0	0	0
Pretrial Conferences........	0	0	0	0
Calendar Calls..............	0	0	0	0
Evidentiary Hearings........	0	0	0	0
All Other Criminal..........	0	0	0	0
PRISONER LITIGATION				
State Habeas Petitions......	41	0	0	0
Federal Habeas Petitions....	5	0	0	0
Prisoner Civil Rights.......	95	0	0	0
Evidentiary Hearings........	(25)	(0)	(0)	(0)
CIVIL				
Motions-636(b)(1)(A)........	18	0	0	0
Motions-636(b)(1)(B)........	0	0	0	0
Social Security.............	0	0	0	0
Pretrial Conferences........	80	0	0	0
Calendar Calls..............	0	0	0	0
Evidentiary Hearings........	0	0	0	0
Special Masterships.........	0	0	0	0
All Other Civil.............	0	0	0	0
CIVIL CASES ON CONSENT	62	0	0	0
Without Trial...............	43	0	0	0
Jury Trial..................	12	0	0	0
Nonjury Trial...............	7	0	0	0
TOTAL-ALL MATTERS	400	0	1	248

MAGISTRATES WORKLOAD - MONTANA

TWELVE MONTH PERIOD ENDING JUNE 30, 1985	Helena 1 P/T (91%)*	Kalispell 1 P/T	Missoula 1 P/T	Wolf Point 1 P/T
MISDEMEANORS TOTAL	0	0	0	0
Traffic	0	0	0	0
Theft	0	0	0	0
Food/Drug	0	0	0	0
Weapons	0	0	0	0
Trespass	0	0	0	0
Mail	0	0	0	0
Assault	0	0	0	0
Fraud	0	0	0	0
Other	0	0	0	0
Dismissed/Acquitted	0	0	0	0
Convicted	0	0	0	0
Total Trials	(0)	(0)	(0)	(0)
PETTY OFFENSES TOTAL	74	45	15	2
Traffic	2	12	1	0
Immigration	0	0	0	0
Food/Drug	1	0	0	0
Mail	0	0	0	0
Drunk/Disorderly	0	12	0	0
Hunt/Fish/Camp	45	15	13	0
Trespass	7	0	0	0
Theft	0	0	0	0
Other	19	6	1	2
Dismissed/Acquitted	44	8	13	1
Convicted	30	37	2	1
Total Trials	(4)	(9)	(1)	(0)
PRELIMINARY PROCEEDINGS	22	14	23	41
Search Warrants	2	8	4	3
Arrest Warrants	5	1	8	10
Initial Appearance	8	5	6	27
Material Witnesses	0	0	0	0
Detention Hearings	0	0	2	0
Bail Reviews	3	0	0	0
Preliminary Exams	2	0	0	1
Grand Jury Sessions	0	0	0	0
Arraignments	0	0	0	0
Judgment Debtors	0	0	0	0
Inspection Warrants	0	0	0	0
IRS Enforcement	0	0	1	0
All Other	2	0	2	0

MAGISTRATES WORKLOAD - MONTANA

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TWELVE MONTH PERIOD ENDING JUNE 30, 1985	Helena 1 P/T (91%)*	Kalispell 1 P/T	Missoula 1 P/T	Wolf Point 1 P/T
ADDITIONAL DUTIES	0	0	1	0
CRIMINAL				
Motions-636(b)(1)(A).......	0	0	0	0
Motions-636(b)(1)(B).......	0	0	0	0
Pretrial Conferences.......	0	0	0	0
Calendar Calls.............	0	0	0	0
Evidentiary Hearings.......	0	0	0	0
All Other Criminal.........	0	0	1	0
PRISONER LITIGATION				
State Habeas Petitions.....	0	0	0	0
Federal Habeas Petitions...	0	0	0	0
Prisoner Civil Rights......	0	0	0	0
Evidentiary Hearings.......	(0)	(0)	(0)	(0)
CIVIL				
Motions-636(b)(1)(A).......	0	0	0	0
Motions-636(b)(1)(B).......	0	0	0	0
Social Security............	0	0	0	0
Pretrial Conferences.......	0	0	0	0
Calendar Calls.............	0	0	0	0
Evidentiary Hearings.......	0	0	0	0
Special Masterships........	0	0	0	0
All Other Civil............	0	0	0	0
CIVIL CASES ON CONSENT	0	0	0	0
Without Trial..............	0	0	0	0
Jury Trial.................	0	-	0	0
Nonjury Trial..............	0	0	0	0
TOTAL-ALL MATTERS	95	53	38	63

MAGISTRATES WORKLOAD MONTANA (Page 5 of 8)

TWELVE MONTH PERIOD ENDING JUNE 30, 1985	Cut Bank (P/T	Bozeman (P/T [illegible])*	TOTAL
MISDEMEANORS TOTAL	0	0	0
Traffic	0	0	0
Theft	0	0	0
Food/Drug	0	0	0
Weapons	0	0	0
Trespass	0	0	0
Mail	0	0	0
Assault	0	0	0
Fraud	0	0	0
Other	0	0	0
Dismissed/Acquitted	0	0	0
Convicted	0	0	0
Total Trials	(0)	(0)	0
PETTY OFFENSES TOTAL	0	0	333
Traffic	0	0	157
Immigration	0	0	0
Food/Drug	0	0	1
Mail	0	0	1
Drunk/Disorderly	0	0	29
Hunt/Fish/Camp	0	0	80
Trespass	0	0	27
Theft	0	0	2
Other	0	0	36
Dismissed/Acquitted	0	0	178
Convicted	0	0	155
Total Trials	(0)	(0)	38
PRELIMINARY PROCEEDINGS	6	-	257
Search Warrants	0	0	42
Arrest Warrants	0	0	30
Initial Appearance	4	0	118
Material Witnesses	0	0	0
Detention Hearings	0	0	3
Bail Reviews	2	0	8
Preliminary Exams	0	0	13
Grand Jury Sessions	0	0	0
Arraignments	0	0	25
Judgment Debtors	0	0	0
Inspection Warrants	0	0	8
IRS Enforcement	0	0	1
All Other	0	0	10

MAGISTRATES WORKLOAD - MONTANA

(Page 8 of 8)

TWELVE MONTH PERIOD ENDING JUNE 30, 1985	Cut Bank 1 P/T	Bozeman 1 P/T (0%)*	TOTAL
ADDITIONAL DUTIES	0	0	240
CRIMINAL			
Motions-636(b)(1)(A)........	0	0	0
Motions-636(b)(1)(B)........	0	0	0
Pretrial Conferences........	0	0	0
Calendar Calls..............	0	0	0
Evidentiary Hearings........	0	0	0
All Other Criminal..........	0	0	1
PRISONER LITIGATION			
State Habeas Petitions......	0	0	41
Federal Habeas Petitions....	0	0	5
Prisoner Civil Rights.......	0	0	95
Evidentiary Hearings........	(0)	(0)	25
CIVIL			
Motions-636(b)(1)(A)........	0	0	18
Motions-636(b)(1)(B)........	0	0	0
Social Security.............	0	0	0
Pretrial Conferences........	0	0	80
Calendar Calls..............	0	0	0
Evidentiary Hearings........	0	0	0
Special Masterships.........	0	0	0
All Other Civil.............	0	0	3
CIVIL CASES ON CONSENT	0	-	62
Without Trial...............	0	0	43
Jury Trial..................	0	0	12
Nonjury Trial...............	0	0	7
TOTAL-ALL MATTERS	6	0	892

* A PERCENTAGE FIGURE IN PARENTHESIS IN THE HEADING FOR SOME MAGISTRATE POSITION LOCATIONS REPRESENTS THE PERCENTAGE OF THE 12-MONTH PERIOD FOR WHICH STATISTICS WERE RECEIVED. IT MAY REFLECT A NEW POSITION FUNDED FOR ONLY A PORTION OF THE STATISTICAL YEAR, A VACANCY IN THE POSITION OR A FAILURE OF THE MAGISTRATE TO FILE REPORTS.

TABLE M-1 U.S. DISTRICT COURTS. MISDEMEANOR CASES:
DEFENDANTS DISPOSED OF BY U.S. MAGISTRATES BY NATURE OF OFFENSE
DURING THE 12 MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	TOTAL	TRAFFIC	THEFT	FOOD/ DRUG	WEAPONS	TRESPASS	MAIL	ASSAULT	FRAUD	OTHER
TOTAL...	12,298	7,237	1,457	1,209	58	38	64	84	1,093	1,058
DC......	52	-	9	8	1	-	-	-	9	25
1ST...	69	6	13	4	-	-	-	-	16	30
ME......	7	4	-	-	-	-	-	-	-	3
MA......	51	1	9	4	-	-	-	-	13	24
NH......	-	-	-	-	-	-	-	-	-	-
RI......	1	-	-	-	-	-	-	-	1	-
PR......	10	1	4	-	-	-	-	-	2	3
2ND...	361	2	109	38	-	-	22	1	140	49
CT......	4	1	2	-	-	-	-	-	1	-
NY,N....	21	-	1	5	-	-	2	-	11	2
NY,E....	152	1	63	14	-	-	15	-	50	9
NY,S....	129	-	36	12	-	-	3	1	56	21
NY,W....	54	-	7	6	-	-	2	-	22	17
VT......	1	-	-	1	-	-	-	-	-	-
3RD...	334	3	69	27	1	-	4	3	189	38
DE......	22	-	9	4	-	-	-	-	4	5
NJ......	281	1	56	19	1	-	4	1	179	20
PA,E....	8	-	2	-	-	-	-	-	2	4
PA,M....	20	2	1	4	-	-	-	2	3	8
PA,W....	3	-	1	-	-	-	-	-	1	1
VI......	-	-	-	-	-	-	-	-	-	-
4TH...	3,917	2,381	463	608	32	7	6	33	68	319
MD......	504	273	73	132	2	1	2	1	9	11
NC,E....	861	542	42	199	6	3	1	11	8	49
NC,M....	14	-	4	-	-	-	1	-	7	2
NC,W....	82	25	5	21	1	-	-	-	2	28
SC......	49	1	-	2	-	-	1	1	5	39
VA,E....	2,402	1,540	338	253	23	3	1	20	35	189
VA,W....	5	-	1	1	-	-	-	-	2	1
WV,N....	-	-	-	-	-	-	-	-	-	-
WV,S....	-	-	-	-	-	-	-	-	-	-
5TH...	338	32	100	106	6	2	2	4	44	42
LA,E....	-	-	-	-	-	-	-	-	-	-
LA,M....	6	1	-	-	-	-	-	-	1	4
LA,W....	16	-	7	5	-	-	-	-	3	1
MS,N....	3	1	-	2	-	-	-	-	-	-
MS,S....	5	-	-	1	-	-	-	-	3	1
TX,N....	5	-	3	1	-	-	-	-	-	1
TX,E....	16	-	-	1	-	-	1	-	6	8
TX,S....	199	28	55	77	5	-	1	4	18	11
TX,W....	88	2	35	19	1	2	-	-	13	16
6TH...	394	103	136	39	10	-	3	1	59	43
KY,E....	1	-	-	1	-	-	-	-	-	-
KY,W....	142	11	90	16	3	-	-	-	4	18
MI,E....	34	1	15	2	-	-	-	-	11	5
MI,W....	22	-	2	3	-	-	-	-	10	7
OH,N....	9	-	-	1	-	-	1	1	6	-
OH,S....	31	10	10	3	3	-	-	-	2	3
TN,E....	12	1	1	2	1	-	-	-	6	1
TN,M....	143	80	18	11	3	-	2	-	20	9
TN,W....	-	-	-	-	-	-	-	-	-	-

TABLE M-1 U.S. DISTRICT COURTS. MISDEMEANOR CASES: DEFENDANTS DISPOSED OF BY U.S. MAGISTRATES BY NATURE OF OFFENSE DURING THE 12 MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	TOTAL	TRAFFIC	THEFT	FOOD/ DRUG	WEAPONS	TRESPASS	MAIL	ASSAULT	FRAUD	OTHER
7TH...	274	156	41	14	1	1	7	1	24	29
IL,N....	43	6	17	1	-	-	5	-	7	7
IL,C....	23	18	2	-	-	-	-	-	1	2
IL,S....	41	10	16	2	1	-	2	-	4	6
IN,N....	4	-	-	-	-	-	-	-	3	1
IN,S....	151	121	5	11	-	1	-	1	1	11
WI,E....	12	1	1	-	-	-	-	-	8	2
WI,W....	-	-	-	-	-	-	-	-	-	-
8TH...	196	103	6	7	1	2	3	-	26	48
AR,E....	12	-	-	-	-	2	-	-	2	8
AR,W....	5	2	-	3	-	-	-	-	-	-
IA,N....	4	-	-	-	-	-	-	-	2	2
IA,S....	6	-	-	1	-	-	-	-	4	1
MN......	1	-	-	-	-	-	-	-	-	1
MO,E....	4	1	-	-	-	-	2	-	1	-
MO,W....	149	99	5	3	-	-	1	-	16	25
NE......	1	-	-	-	-	-	-	-	-	1
ND......	9	1	1	-	-	-	-	-	1	6
SD......	5	-	-	-	1	-	-	-	-	4
9TH...	3,703	2,522	352	233	3	14	10	18	356	195
AK......	87	38	9	24	-	-	-	-	5	11
AZ......	95	2	8	47	-	2	-	-	29	7
CA,N....	361	80	81	13	-	-	3	2	151	31
CA,E....	183	36	37	17	-	5	-	8	45	35
CA,C....	54	-	19	10	1	-	-	-	18	6
CA,S....	159	8	27	52	-	-	1	-	30	41
HI......	1,570	1,410	101	35	2	1	-	3	6	12
ID......	11	5	2	1	-	1	-	-	1	1
MT......	9	-	2	1	-	-	-	-	1	5
NV......	33	1	7	-	-	-	3	1	14	7
OR......	43	-	3	2	-	-	-	-	34	4
WA,E....	21	-	4	-	-	-	-	-	2	15
WA,W....	1,077	942	52	31	-	5	3	4	20	20
GUAM....	-	-	-	-	-	-	-	-	-	-
NMI.....	-	-	-	-	-	-	-	-	-	-
10TH..	763	422	101	74	-	12	5	16	61	72
CO......	159	57	48	9	-	7	3	3	23	9
KS......	152	79	18	14	-	2	-	12	4	23
NM......	27	10	5	7	-	-	1	-	3	1
OK,N....	9	-	3	-	-	-	-	-	4	2
OK,E....	3	-	1	-	-	-	-	-	1	1
OK,W....	359	268	19	36	-	1	-	-	14	21
UT......	50	8	7	7	-	2	1	1	12	12
WY......	4	-	-	1	-	-	-	-	-	3
11TH..	1,941	1,507	58	91	3	-	2	7	101	172
AL,N....	229	210	2	12	-	-	-	-	3	2
AL,M....	115	74	19	16	-	-	-	4	1	1
AL,S....	9	-	-	-	-	-	-	1	5	3
FL,N....	8	1	2	1	-	-	-	-	4	-
FL,M....	72	6	5	8	1	-	-	1	39	12
FL,S....	64	-	-	17	-	-	-	-	31	16
GA,N....	368	272	13	13	1	-	2	1	14	52
GA,M....	949	848	14	14	1	-	-	-	-	72
GA,S....	127	96	3	10	-	-	-	-	4	14

TABLE M-1A U.S. DISTRICT COURTS. MISDEMEANOR CASES: DEFENDANTS DISPOSED OF BY U.S. MAGISTRATES BY NATURE OF OFFENSE DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	(PETTY OFFENSES)									
	TOTAL	TRAFFIC	IMMI-GRATION	FOOD/ DRUG	MAIL	DRUNK/ DISOR-DERLY	HUNT/ FISH/ CAMP	TRES-PASS	THEFT	OTHER
TOTAL...	79,971	52,011	12,901	860	231	3,321	3,444	2,111	948	4,544
DC......	13	-	-	-	1	-	-	9	1	2
1ST...	757	613	53	1	-	19	16	11	26	18
ME......	35	16	4	1	-	6	2	1	-	5
MA......	397	378	-	-	-	5	6	4	1	3
NH......	16	5	-	-	-	1	7	1	1	1
RI......	18	13	-	-	-	1	1	3	-	-
PR......	291	201	49	-	-	6	-	2	24	9
2ND...	1,158	666	110	33	30	146	12	52	32	77
CT......	3	1	-	-	-	-	1	-	-	1
NY,N....	450	289	52	4	7	42	9	38	-	9
NY,E....	371	259	-	17	1	43	1	8	14	28
NY,S....	247	110	-	12	11	61	-	3	14	36
NY,W....	42	-	21	-	11	-	1	3	3	3
VT......	45	7	37	-	-	-	-	-	1	-
3RD...	2,326	1,644	-	17	54	215	41	189	26	140
DE......	96	41	-	1	-	10	17	23	1	3
NJ......	1,606	1,181	-	7	20	141	8	152	23	74
PA,E....	134	79	-	3	23	12	-	1	2	14
PA,M....	412	309	-	6	3	50	4	12	-	28
PA,W....	72	33	-	-	8	1	12	1	-	17
VI......	6	1	-	-	-	1	-	-	-	4
4TH...	16,760	14,783	-	124	16	326	200	337	208	766
MD......	6,320	5,901	-	25	-	84	36	71	68	135
NC,E....	2,597	2,120	-	2	-	77	42	77	68	211
NC,M....	30	5	-	-	-	-	-	-	2	3
NC,W....	271	66	-	36	11	17	16	8	14	103
SC......	515	473	-	-	-	3	26	6	1	6
VA,E....	6,723	6,057	-	46	4	97	70	168	52	229
VA,W....	237	78	-	15	1	48	10	7	3	75
WV,N....	1	-	-	-	-	-	-	-	-	1
WV,S....	86	83	-	-	-	-	-	-	-	3
5TH...	12,375	5,106	5,040	85	14	395	1,200	195	66	274
LA,E....	306	91	6	1	8	16	164	2	1	17
LA,M....	5	-	-	-	2	-	3	-	-	-
LA,W....	1,991	856	1	28	-	60	871	59	29	87
MS,N....	312	240	-	10	-	11	34	1	-	16
MS,S....	390	321	-	6	-	2	20	18	9	14
TX,N....	161	63	-	25	1	17	-	9	9	17
TX,E....	193	112	-	-	-	24	27	4	-	26
TX,S....	1,986	192	1,737	8	-	8	5	2	1	33
TX,W....	7,051	3,231	3,296	7	3	257	76	100	17	64
6TH...	5,422	4,573	8	12	5	181	181	225	15	222
KY,E....	171	124	-	-	-	7	10	4	2	24
KY,W....	4,385	3,910	7	3	-	95	92	193	4	121
MI,E....	168	96	-	-	2	44	10	19	3	14
MI,W....	24	13	1	-	1	1	6	-	1	1
OH,N....	65	8	-	2	2	2	42	-	-	9
OH,S....	143	76	-	-	-	42	1	2	5	17
TN,E....	348	283	-	4	-	22	12	3	-	24
TN,M....	112	87	-	-	-	6	4	3	-	12
TN,W....	26	16	-	3	-	2	4	1	-	-

TABLE M-1A U.S. DISTRICT COURTS. MISDEMEANOR CASES: DEFENDANTS DISPOSED OF BY U.S. MAGISTRATES BY NATURE OF OFFENSE DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	(PETTY OFFENSES)									
	TOTAL	TRAFFIC	IMMI-GRATION	FOOD/ DRUG	MAIL	DRUNK/ DISOR-DERLY	HUNT/ FISH/ CAMP	TRES-PASS	THEFT	OTHER
7TH...	2,931	2,420	-	42	38	176	40	57	28	130
IL,N....	2,243	1,873	-	36	38	133	3	33	21	106
IL,C....	153	141	-	-	-	-	8	1	-	3
IL,S....	65	26	-	2	-	1	22	6	1	7
IN,N....	46	15	-	4	-	16	-	5	3	3
IN,S....	370	337	-	-	-	10	5	11	3	4
WI,E....	40	16	-	-	-	16	1	1	-	6
WI,W....	14	12	-	-	-	-	1	-	-	1
8TH...	1,130	748	-	31	8	70	73	51	6	143
AR,E....	17	12	-	-	1	-	2	-	-	2
AR,W....	138	69	-	10	1	14	7	3	-	34
IA,N....	12	-	-	-	1	-	5	2	-	4
IA,S....	59	40	-	-	-	1	6	6	-	6
MN......	81	50	-	6	-	6	13	1	1	4
MO,E....	490	364	-	9	-	38	10	21	2	44
MO,W....	142	136	-	-	3	-	-	-	-	3
NE......	22	5	-	-	-	1	1	15	-	-
ND......	30	3	-	3	1	-	19	1	1	2
SD......	139	69	-	3	1	10	10	2	2	42
9TH...	23,445	10,307	7,256	369	41	1,135	1,117	697	351	2,172
AK......	521	411	-	-	-	5	71	11	-	23
AZ......	1,781	446	929	22	3	158	16	14	29	164
CA,N....	2,304	1,593	-	40	-	243	36	112	45	235
CA,E....	2,234	907	35	104	11	247	299	126	69	436
CA,C....	1,690	1,011	-	48	4	61	180	63	121	202
CA,S....	7,808	1,048	6,285	97	20	22	81	72	49	134
HI......	2,188	1,961	-	4	-	157	1	18	-	47
ID......	227	96	-	-	-	-	70	15	-	46
MT......	232	92	4	-	1	11	64	24	2	34
NV......	938	683	-	15	2	121	19	26	19	53
OR......	662	131	-	6	-	21	153	43	6	302
WA,E....	88	13	-	-	-	2	36	2	-	35
WA,W....	2,772	1,915	3	33	-	87	91	171	11	461
10TH..	8,626	7,642	33	31	8	212	303	95	38	264
CO......	382	211	5	5	3	10	56	11	8	73
KS......	2,188	2,178	-	-	-	1	9	-	-	-
NM......	1,377	1,094	28	11	-	70	60	40	1	73
OK,N....	10	4	-	-	-	-	-	-	-	6
OK,E....	196	145	-	5	-	9	14	2	2	19
OK,W....	3,202	3,071	-	1	4	5	66	25	5	25
UT......	1,018	797	-	6	-	93	78	[illegible]	1	35
WY......	253	142	-	3	1	24	20	9	21	33
11TH..	5,028	3,509	1	115	16	446	261	193	151	336
AL,N....	276	246	-	-	-	7	2	5	6	10
AL,M....	406	377	-	-	-	3	12	3	-	11
AL,S....	16	12	-	-	1	-	3	-	-	-
FL,N....	1,212	629	-	52	4	191	58	117	103	58
FL,M....	222	167	-	-	-	18	7	8	2	20
FL,S....	417	208	-	2	-	30	90	21	3	63
GA,N....	677	354	1	24	10	160	46	9	6	67
GA,M....	25	5	-	1	-	-	6	7	1	5
GA,S....	1,777	1,511	-	36	1	37	37	23	30	102

TABLE M-2 U.S. DISTRICT COURTS. MISDEMEANOR CASES:
DEFENDANTS DISPOSED OF BY U.S. MAGISTRATES BY TYPE OF DISPOSITION
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	TOTAL ALL DEFENDANTS	MISDEMEANORS OTHER THAN PETTY OFFENSES							PETTY OFFENSES						
			NOT CONVICTED			CONVICTED				NOT CONVICTED			CONVICTED		
		TOTAL	WITHOUT TRIAL	COURT TRIAL	JURY TRIAL	AFTER PLEA	COURT TRIAL	JURY TRIAL	TOTAL	WITHOUT TRIAL	COURT TRIAL	JURY TRIAL	AFTER PLEA	COURT TRIAL	JURY TRIAL
TOTAL...	92,269	12,298	3,330	351	26	7,062	599	80	79,971	21,923	4,783	17	45,895	7,348	65
DC......	65	52	2	-	-	50	-	-	13	-	1	-	9	3	-
1ST...	826	69	37	1	-	31	-	-	757	223	113	-	253	168	-
ME......	42	7	2	-	-	5	-	-	35	1	1	-	33	-	-
MA......	448	51	35	-	-	16	-	-	397	35	62	-	146	154	-
NH......	16	-	-	-	-	-	-	-	16	4	5	-	3	4	-
RI......	19	1	-	-	-	1	-	-	18	4	5	-	3	6	-
PR......	301	10	-	1	-	9	-	-	291	179	40	-	68	4	-
2ND...	1,519	361	19	-	2	337	3	-	1,158	397	33	1	679	48	-
CT......	7	4	2	-	-	2	-	-	3	1	-	-	2	-	-
NY,N....	471	21	1	-	-	20	-	-	450	113	-	-	318	19	-
NY,E....	523	152	8	-	1	143	-	-	371	142	27	-	177	25	-
NY,S....	376	129	6	-	1	121	1	-	247	123	6	1	117	-	-
NY,W....	96	54	2	-	-	50	2	-	42	-	-	-	42	-	-
VT......	46	1	-	-	-	1	-	-	45	18	-	-	23	4	-
3RD...	2,660	334	125	10	1	186	8	4	2,326	316	401	-	1,337	272	-
DE......	118	22	4	2	-	14	1	1	96	24	7	-	39	26	-
NJ......	1,887	281	119	8	1	143	7	3	1,606	127	308	-	1,064	107	-
PA,E....	142	8	-	-	-	8	-	-	134	30	15	-	57	32	-
PA,M....	432	20	2	-	-	18	-	-	412	105	64	-	144	99	-
PA,W....	75	3	-	-	-	3	-	-	72	29	7	-	32	4	-
VI......	6	-	-	-	-	-	-	-	6	1	-	-	1	4	-
4TH...	20,633	3,873	1,437	130	3	2,008	289	6	16,760	5,210	1,590	-	7,429	2,422	9
MD......	6,824	504	117	3	1	364	19	-	6,320	1,917	470	-	3,402	529	2
NC,E....	3,414	817	532	7	-	275	2	1	2,597	1,234	43	-	1,273	47	-
NC,M....	24	14	-	-	-	14	-	-	10	-	1	-	7	2	-
NC,W....	353	82	3	2	-	69	8	-	271	75	14	-	111	71	-
SC......	564	49	1	-	-	48	-	-	515	323	23	-	129	40	-
VA,E....	9,125	2,402	781	118	2	1,236	260	5	6,723	1,631	989	-	2,407	1,689	7
VA,W....	242	5	3	-	-	2	-	-	237	49	50	-	94	44	-
WV,N....	1	-	-	-	-	-	-	-	1	-	-	-	1	-	-
WV,S....	86	-	-	-	-	-	-	-	86	81	-	-	5	-	-
5TH...	12,713	338	22	1	-	309	3	3	12,375	2,089	186	3	9,559	533	5
LA,E....	306	-	-	-	-	-	-	-	306	48	14	-	217	23	4
LA,M....	11	6	-	-	-	6	-	-	5	-	-	-	5	-	-
LA,W....	2,007	16	3	-	-	12	1	-	1,991	345	23	-	1,490	133	-
MS,N....	315	3	2	-	-	1	-	-	312	32	13	-	232	34	1
MS,S....	395	5	-	-	-	5	-	-	390	88	14	-	274	14	-
TX,N....	146	5	1	-	-	4	-	-	141	52	18	1	57	13	-
TX,E....	209	16	-	-	-	13	2	1	193	101	11	-	35	46	-
TX,S....	2,185	199	13	-	-	184	-	2	1,986	158	13	-	1,809	6	-
TX,W....	7,139	88	3	1	-	84	-	-	7,051	1,265	80	2	5,440	264	-
6TH...	5,816	394	51	9	2	302	29	1	5,422	2,995	163	-	1,946	338	-
KY,E....	172	1	-	-	-	1	-	-	171	86	5	-	69	11	-
KY,W....	4,527	142	19	5	-	100	17	1	4,385	2,701	86	-	1,373	225	-
MI,E....	182	34	-	-	-	34	-	-	148	56	24	-	49	19	-
MI,W....	46	22	1	-	-	21	-	-	24	13	-	-	11	-	-
OH,N....	74	9	1	-	-	7	1	-	65	9	6	-	49	1	-
OH,S....	174	31	10	1	1	16	3	-	143	78	5	-	49	11	-
TN,E....	360	12	-	-	1	10	1	-	348	22	10	-	269	47	-
TN,M....	255	143	20	3	-	113	7	-	112	24	6	-	68	16	-
TN,W....	26	-	-	-	-	-	-	-	26	6	1	-	9	10	-

TABLE M-2 U.S. DISTRICT COURTS, MISDEMEANOR CASES:
DEFENDANTS DISPOSED OF BY U.S. MAGISTRATES BY TYPE OF DISPOSITION
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	TOTAL ALL DEFENDANTS	MISDEMEANORS OTHER THAN PETTY OFFENSES							PETTY OFFENSES						
		TOTAL	NOT CONVICTED			CONVICTED			TOTAL	NOT CONVICTED			CONVICTED		
			WITHOUT TRIAL	COURT TRIAL	JURY TRIAL	AFTER PLEA	COURT TRIAL	JURY TRIAL		WITHOUT TRIAL	COURT TRIAL	JURY TRIAL	AFTER PLEA	COURT TRIAL	JURY TRIAL
7TH...	3,205	274	71	11	2	183	6	1	2,931	1,839	292	-	511	289	-
IL,N....	2,286	43	6	-	-	37	-	-	2,243	1,607	223	-	215	198	-
IL,C....	176	23	3	-	-	19	1	-	153	5	35	-	76	37	-
IL,S....	106	41	14	1	-	25	-	1	65	34	-	-	30	1	-
IN,N....	50	4	-	-	1	3	-	-	46	15	1	-	25	5	-
IN,S....	521	151	48	10	-	88	5	-	370	162	24	-	148	36	-
WI,E....	52	12	-	-	1	11	-	-	40	12	3	-	14	11	-
WI,W....	14	-	-	-	-	-	-	-	14	4	6	-	3	1	-
8TH...	1,326	196	24	-	1	163	5	3	1,130	356	66	-	554	147	7
AR,E....	29	12	-	-	-	12	-	-	17	3	3	-	7	4	-
AR,W....	143	5	-	-	-	5	-	-	138	34	4	-	79	17	4
IA,N....	16	4	-	-	-	4	-	-	12	-	3	-	4	5	-
IA,S....	65	6	-	-	-	6	-	-	59	2	15	-	17	23	2
MN......	82	1	-	-	-	1	-	-	81	50	4	-	14	13	-
MO,E....	494	4	-	-	-	4	-	-	490	225	28	-	193	44	-
MO,W....	291	149	23	-	1	115	7	3	142	-	3	-	136	3	-
NE......	23	1	-	-	-	1	-	-	22	-	-	-	17	5	-
ND......	39	9	1	-	-	7	1	-	30	5	-	-	19	6	-
SD......	144	5	-	-	-	5	-	-	139	37	6	-	68	27	1
9TH...	27,148	3,703	1,326	24	9	2,283	39	22	23,445	4,803	881	8	16,273	1,470	10
AK......	608	87	46	-	-	37	-	4	521	92	29	-	322	78	-
AZ......	1,876	95	4	-	-	91	-	-	1,781	162	20	-	1,567	26	6
CA,N....	2,665	361	90	4	1	258	5	3	2,304	927	217	-	850	310	-
CA,E....	2,417	183	35	3	1	134	8	2	2,234	426	120	-	1,488	200	-
CA,C....	1,744	54	1	-	-	53	-	-	1,690	494	84	-	889	219	4
CA,S....	7,967	159	12	2	-	143	1	1	7,808	1,181	7	-	6,607	13	-
HI......	3,758	1,570	842	4	4	710	9	1	2,188	379	78	-	1,673	58	-
ID......	238	11	2	-	-	8	-	1	227	69	7	-	126	25	-
MT......	241	9	2	-	1	6	-	-	232	82	11	-	117	22	-
NV......	971	33	1	-	-	30	-	2	938	280	142	8	353	155	-
OR......	705	43	-	-	-	43	-	-	662	181	15	-	415	51	-
WA,E....	109	21	7	-	-	14	-	-	88	20	12	-	29	27	-
WA,W....	3,849	1,077	284	11	2	756	16	8	2,772	510	139	-	1,837	286	-
10TH..	9,389	763	107	11	2	627	12	4	8,626	2,856	414	-	4,564	792	-
CO......	541	159	16	-	-	141	2	-	382	105	14	-	229	34	-
KS......	2,340	152	53	6	1	83	6	3	2,188	648	137	-	1,107	296	-
NM......	1,404	27	13	-	-	14	-	-	1,377	623	111	-	502	141	-
OK,N....	19	9	1	-	-	8	-	-	10	2	-	-	7	1	-
OK,E....	199	3	-	-	-	3	-	-	196	126	2	-	32	36	-
OK,W....	3,561	359	19	5	1	331	3	-	3,202	1,041	77	-	2,001	83	-
UT......	1,068	50	5	-	-	43	1	1	1,018	271	58	-	510	179	-
WY......	257	4	-	-	-	4	-	-	253	40	15	-	176	22	-
11TH..	6,969	1,941	109	154	4	1,466	202	6	5,028	739	663	5	2,741	866	14
AL,N....	505	229	18	5	-	192	14	-	276	37	17	5	182	35	-
AL,M....	521	115	23	5	3	75	7	2	406	88	27	-	231	60	-
AL,S....	25	9	1	-	-	8	-	-	16	-	1	-	13	2	-
FL,N....	1,220	8	2	-	-	5	-	1	1,212	171	173	-	722	145	1
FL,M....	294	72	1	-	-	71	-	-	222	157	9	-	36	20	-
FL,S....	481	64	-	-	-	62	1	1	417	175	36	-	123	76	7
GA,N....	1,045	368	22	12	-	300	34	-	677	97	53	-	434	87	6
GA,M....	974	949	3	127	-	682	136	1	25	-	1	-	20	4	-
GA,S....	1,904	127	39	5	1	71	10	1	1,777	14	346	-	980	437	-

TABLE M-3 U.S. DISTRICT COURTS.
MATTERS DISPOSED OF BY U.S. MAGISTRATES
PURSUANT TO TITLE 28 U.S.C. SECTION 636(A)
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	TOTAL	SEARCH WAR-RANTS	ARREST WAR-RANTS	SUM-MONSES	INITIAL APPEAR-ANCES	PRELIM. EXAMS	BAIL REVIEWS	GRAND JURY SESSIONS	ARRAIGN-MENTS	OTHER
TOTAL...	131,070	11,202	12,753	1,631	45,385	5,588	6,876	4,188	27,734	15,713
DC......	1,866	146	260	3	729	296	79	111	146	96
1ST...	5,327	382	321	76	1,494	284	282	283	1,439	766
ME......	256	19	16	-	106	4	-	8	59	44
MA......	2,129	196	193	67	556	46	125	142	503	301
NH......	204	12	5	-	46	5	3	59	47	27
RI......	421	79	35	1	56	44	17	25	90	74
PR......	2,317	76	72	8	730	185	137	49	740	320
2ND...	9,758	1,886	1,285	62	3,465	113	625	565	741	1,016
CT......	987	165	73	1	295	20	139	44	164	126
NY,N....	693	47	95	-	224	26	28	61	176	76
NY,E....	2,881	429	400	31	1,032	4	312	266	137	270
NY,S....	4,174	1,099	656	30	1,681	10	125	98	9	466
NY,W....	771	140	67	-	190	42	9	77	197	49
VT......	252	6	34	-	83	11	12	19	58	29
3RD...	7,573	1,014	1,089	117	2,094	392	354	607	1,348	558
DE......	169	27	25	-	39	8	-	14	37	19
NJ......	1,735	327	344	23	687	12	34	167	28	113
PA,E....	2,868	301	474	-	601	241	49	274	724	204
PA,M....	401	67	63	30	182	18	6	6	1	48
PA,W....	1,474	291	134	64	257	113	30	146	299	140
VI......	926	21	49	-	328	-	235	-	259	34
4TH...	8,604	834	1,066	96	2,895	397	276	225	1,869	946
MD......	2,298	394	371	-	708	61	41	1	467	255
NC,E....	1,008	26	95	-	390	27	33	73	324	80
NC,M....	530	46	69	-	266	27	30	10	14	68
NC,W....	1,104	22	74	64	408	33	23	12	375	93
SC......	1,069	64	201	7	243	41	80	32	334	67
VA,E....	1,534	215	156	23	619	156	39	59	59	208
VA,W....	306	31	63	-	95	5	16	5	-	111
WV,N....	263	19	32	2	45	28	1	-	103	33
WV,S....	492	17	65	-	121	19	13	33	193	31
5TH...	20,944	920	2,056	332	8,680	879	1,150	397	3,348	3,182
LA,E....	2,277	43	54	-	749	24	74	91	780	462
LA,M....	304	12	34	-	127	4	6	1	90	30
LA,W....	454	35	28	13	161	6	49	18	94	50
MS,N....	284	9	12	-	124	10	11	8	90	20
MS,S....	570	39	40	-	170	27	40	2	224	28
TX,N....	2,040	132	259	19	1,047	85	48	2	63	385
TX,E....	565	29	53	6	140	22	30	4	76	205
TX,S....	8,931	402	765	164	3,900	328	439	145	1,580	1,208
TX,W....	5,519	219	811	130	2,262	373	453	126	351	794
6TH...	9,463	712	1,091	37	2,889	447	246	427	2,803	811
KY,E....	477	48	39	18	87	28	28	12	129	88
KY,W....	763	90	104	-	193	50	18	18	178	152
MI,E....	2,961	242	425	1	825	81	72	213	985	117
MI,W....	520	49	63	-	108	4	3	45	226	22
OH,N....	1,112	114	206	1	235	97	40	45	271	103
OH,S....	1,281	77	162	16	336	85	44	59	310	192
TN,E....	582	52	48	-	222	10	7	16	196	31
TN,M....	610	53	30	-	320	36	13	18	71	69
TN,W....	1,157	27	14	1	963	56	21	1	437	37

TABLE M-3 U.S. DISTRICT COURTS.
MATTERS DISPOSED OF BY U.S. MAGISTRATES
PURSUANT TO TITLE 28 U.S.C. SECTION 636(A)
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	TOTAL	SEARCH WAR-RANTS	ARREST WAR-RANTS	SUM-MONSES	INITIAL APPEAR-ANCES	PRELIM. EXAMS	BAIL REVIEWS	GRAND JURY SESSIONS	ARRAIGN-MENTS	OTHER
7TH...	5,038	451	457	9	1,665	278	89	168	799	1,122
IL,N....	1,499	159	135	4	578	191	45	18	130	239
IL,C....	382	28	44	-	73	20	4	12	92	109
IL,S....	486	32	67	-	91	18	7	7	169	95
IN,N....	675	53	59	3	229	17	4	19	120	171
IN,S....	844	42	94	1	305	14	2	1	2	383
WI,E....	825	129	42	-	290	14	23	43	204	80
WI,W....	327	8	16	1	99	4	4	68	82	45
8TH...	7,124	544	834	24	2,221	328	338	80	1,848	907
AR,E....	474	42	31	2	143	8	-	2	202	44
AR,W....	159	34	14	-	50	15	2	1	32	11
IA,N....	201	31	6	6	22	3	3	14	80	36
IA,S....	272	19	27	-	58	5	18	18	105	22
MN......	1,336	95	206	8	348	118	48	6	342	165
MO,E....	1,619	187	317	-	476	64	239	1	193	142
MO,W....	1,450	93	109	-	557	71	12	26	395	187
NE......	735	17	36	-	236	8	3	7	228	200
ND......	376	21	72	8	107	13	9	3	104	39
SD......	502	5	16	-	224	23	4	2	167	61
9TH...	31,423	3,117	2,385	638	11,543	1,102	2,039	555	7,066	2,978
AK......	435	58	28	6	133	26	26	10	88	60
AZ......	3,293	232	155	26	1,315	100	318	74	743	330
CA,N....	5,187	473	468	124	1,756	190	382	39	1,331	424
CA,E....	2,578	177	332	134	635	131	100	72	650	347
CA,C....	6,309	1,064	421	103	2,341	77	192	155	1,305	651
CA,S....	6,771	357	240	36	3,614	255	746	9	1,283	231
HI......	668	239	4	-	113	29	23	37	156	67
ID......	415	27	27	-	99	17	2	9	177	57
MT......	200	34	24	5	121	7	3	-	4	2
NV......	1,514	140	234	76	374	27	62	76	340	185
OR......	1,308	150	45	100	263	103	3	37	329	278
WA,E....	711	70	97	-	142	41	55	1	247	58
WA,W....	2,034	96	310	28	637	99	127	36	413	288
10TH..	7,572	414	520	55	2,194	330	272	85	1,941	1,761
CO......	1,755	113	196	33	544	137	53	61	338	280
KS......	1,019	39	33	-	405	36	23	-	333	150
NM......	1,346	60	63	13	532	30	44	14	392	198
OK,N....	1,180	48	57	-	249	25	24	1	193	583
OK,E....	189	11	15	-	19	11	9	-	100	24
OK,W....	913	54	78	9	230	30	34	2	274	202
UT......	976	80	40	-	119	41	84	7	310	295
WY......	194	9	38	-	96	20	1	-	1	29
11TH..	16,378	782	1,389	182	5,516	742	1,126	685	4,386	1,570
AL,N....	757	49	60	-	216	7	1	12	339	73
AL,M....	254	16	55	-	108	19	9	12	1	34
AL,S....	542	24	30	-	141	26	36	11	214	60
FL,N....	382	25	41	-	184	6	15	12	15	84
FL,M....	3,626	157	371	61	1,120	268	152	141	965	391
FL,S....	8,235	284	467	114	3,008	294	826	377	2,153	712
GA,N....	1,830	166	184	4	512	75	77	100	530	182
GA,M....	191	21	25	3	120	13	2	-	-	7
GA,S....	561	40	156	-	107	34	8	20	169	27

TABLE M-4 U.S. DISTRICT COURTS
PROCEEDINGS AND CASES DISPOSED OF BY U.S. MAGISTRATES
PURSUANT TO TITLE 28 U.S.C. SECTIONS 636(B) AND (C)
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	TOTAL CRIMINAL CIVIL MATTERS	CRIMINAL PROCEEDINGS					
				MOTIONS			
		TOTAL CRIMINAL	PRETRIAL CONFERENCES	636(B)(1)(A)	636(B)(1)(B)	PROBATION REVOCATIONS	OTHER
TOTAL...	220,203	37,431	3,017	26,687	2,731	104	4,892
DC......	871	44	-	3	1	24	16
1ST...	18,214	5,169	112	4,830	144	-	83
ME......	1,186	57	39	15	3	-	-
MA......	10,928	4,095	4	3,960	108	-	23
NH......	1,071	83	-	77	6	-	-
RI......	1,067	40	14	5	-	-	21
PR......	3,962	894	55	773	27	-	39
2ND...	12,126	420	14	256	63	-	87
CT......	2,745	253	-	219	34	-	-
NY,N....	763	-	-	-	-	-	-
NY,E....	4,290	15	-	1	-	-	14
NY,S....	3,127	79	14	2	-	-	63
NY,W....	974	73	-	34	29	-	10
VT......	227	-	-	-	-	-	-
3RD...	14,229	816	2	629	115	2	68
DE......	264	-	-	-	-	-	-
NJ......	7,628	11	-	4	2	-	5
PA,E....	2,052	419	-	285	97	2	35
PA,M....	762	1	-	1	-	-	-
PA,W....	2,523	322	2	276	16	-	28
VI......	998	63	-	63	-	-	-
4TH...	12,460	1,840	60	1,437	98	3	242
MD......	1,474	16	-	-	-	1	15
NC,E....	2,199	502	-	458	20	1	23
NC,M....	1,429	95	-	40	1	-	54
NC,W....	1,324	1,028	-	901	69	-	58
SC......	2,151	145	60	19	7	-	59
VA,E....	1,609	13	-	10	-	-	3
VA,W....	1,101	15	-	-	-	1	14
WV,N....	469	-	-	-	-	-	-
WV,S....	686	26	-	9	1	-	16
5TH...	33,004	3,830	128	3,015	82	36	569
LA,E....	8,913	902	53	721	33	6	89
LA,M....	760	170	25	126	4	-	15
LA,W....	3,822	972	34	899	5	-	34
MS,N....	2,800	90	-	51	-	-	39
MS,S....	7,496	562	7	374	-	2	179
TX,N....	1,000	32	5	23	-	-	4
TX,E....	1,066	3	-	1	2	-	-
TX,S....	3,624	867	4	725	2	2	134
TX,W....	2,930	232	-	95	36	26	75
6TH...	27,982	2,252	645	909	74	8	616
KY,E....	2,701	242	3	213	10	1	15
KY,W....	1,299	89	4	-	1	1	83
MI,E....	6,862	726	356	73	17	2	278
MI,W....	2,600	231	148	26	6	2	49
OH,N....	4,329	433	93	319	21	-	-
OH,S....	6,848	71	-	37	3	-	31
TN,E....	2,162	296	41	231	16	2	6
TN,M....	903	9	-	-	-	-	9
TN,W....	1,234	161	-	10	2	-	149

TABLE M-4 U.S.DISTRICT COURTS
PROCEEDINGS AND CASES DISPOSED OF BY U.S. MAGISTRATES
PURSUANT TO TITLE 28 U.S.C. SECTIONS 636(B) AND (C)
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	TOTAL CRIMINAL CIVIL MATTERS	CRIMINAL PROCEEDINGS					
		TOTAL CRIMINAL	PRETRIAL CONFERENCES	MOTIONS		PROBATION REVOCATIONS	OTHER
				636(B)(1)(A)	636(B)(1)(B)		
7TH...	19,826	1,821	140	1,037	296	2	346
IL,N....	4,100	358	13	212	40	-	93
IL,C....	5,606	50	-	41	1	-	8
IL,S....	1,438	227	2	94	18	2	111
IN,N....	731	42	27	13	1	-	1
IN,S....	5,907	33	-	21	10	-	2
WI,E....	1,198	698	9	419	180	-	90
WI,W....	846	413	89	237	46	-	41
8TH...	18,167	4,529	490	2,713	959	10	357
AR,E....	767	29	1	5	1	-	22
AR,W....	186	11	-	2	-	-	9
IA,N....	858	22	4	-	-	-	18
IA,S....	1,093	101	34	63	-	-	4
MN......	5,772	1,410	-	945	431	-	34
MO,E....	3,095	1,656	1	1,099	436	-	121
MO,W....	4,021	879	423	310	69	1	68
NE......	2,136	401	2	299	22	9	78
ND......	276	13	-	10	-	-	3
SD......	13	5	5	-	-	-	-
9TH...	22,180	3,907	142	1,953	360	63	1,389
AK......	1,302	310	43	211	46	-	11
AZ......	643	48	-	-	1	-	44
CA,N....	2,361	839	11	66	29	6	643
CA,E....	2,236	729	9	109	5	13	389
CA,C....	2,873	118	-	-	1	-	117
CA,S....	2,161	103	-	48	30	-	25
HI......	1,398	172	71	51	24	1	25
ID......	241	13	-	9	3	-	1
MT......	226	-	-	-	-	-	-
NV......	3,744	1,473	7	1,293	129	40	3
OR......	2,675	327	-	172	95	-	60
WA,E....	381	3	-	-	-	-	3
WA,W....	969	90	1	14	2	3	68
10TH..	13,986	642	363	143	48	3	85
CO......	3,483	219	197	9	-	-	9
KS......	5,416	299	191	48	11	3	49
NM......	1,382	22	-	18	3	-	1
OK,N....	976	28	13	-	8	-	10
OK,E....	384	-	-	-	-	-	-
OK,W....	1,399	22	-	13	1	-	8
UT......	911	96	3	55	25	-	8
WY......	587	-	-	-	-	-	-
11TH..	36,538	12,161	961	9,743	491	33	954
AL,N....	2,060	1,159	337	691	129	-	2
AL,M....	918	1	-	-	-	-	1
AL,S....	1,833	359	-	348	10	-	1
FL,N....	2,227	81	-	1	-	-	80
FL,M....	9,086	4,337	362	3,579	133	10	353
FL,S....	6,620	4,672	13	4,298	84	13	264
GA,N....	3,830	1,494	229	1,083	133	10	39
GA,M....	-	-	-	-	-	-	-
GA,S....	1,648	361	-	98	8	-	264

TABLE M-4A U.S. DISTRICT COURTS
PROCEEDINGS AND CASES DISPOSED OF BY U.S. MAGISTRATES
PURSUANT TO TITLE 28 U.S.C. SECTIONS 636(B) AND (C)
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	CIVIL PROCEEDINGS					CIVIL CASES						SECTION 636(C)
	TOTAL CIVIL MATTERS	PRETRIAL CONFERENCES	636(B) (1)(A)	636(B) (1)(B)	OTHER	TOTAL CIVIL CASES	PRISONER PETITIONS			SOCIAL SECURITY	SPECIAL MASTER	CONSENT CASES
							STATE	FEDERAL	CIVIL RIGHTS			
TOTAL...	146,252	40,419	92,047	7,623	6,163	36,600	6,820	2,499	14,986	11,646	1,079	4,960
DC......	815	265	509	10	31	12	-	-	2	-	10	39
1ST...	12,597	2,634	9,387	461	115	448	103	8	106	227	4	108
ME......	1,038	511	448	70	9	61	14	-	16	31	-	51
MA......	6,765	1,320	5,114	282	39	118	53	-	34	28	3	39
NH......	902	315	572	12	3	86	25	-	46	15	-	8
RI......	983	99	701	76	47	104	3	-	2	98	1	4
PR......	2,989	389	2,552	21	27	79	8	8	8	55	-	6
2ND...	10,246	5,620	3,235	978	413	1,462	261	95	497	594	95	168
CT......	2,207	465	1,080	639	23	285	19	10	51	205	-	22
NY,N....	9	7	1	-	1	754	124	60	375	194	1	-
NY,E....	4,256	2,813	976	106	361	21	1	-	2	17	1	81
NY,S....	2,803	1,722	872	193	16	245	78	18	52	94	63	38
NY,W....	798	573	205	18	2	103	37	5	3	49	9	27
VT......	173	40	101	22	10	54	2	2	14	35	1	-
3RD...	11,665	5,183	5,891	547	44	1,748	519	105	734	364	26	59
DE......	38	-	26	5	7	228	25	1	173	29	-	-
NJ......	7,484	4,181	3,151	121	31	133	53	-	65	-	15	15
PA,E....	1,203	427	738	38	-	430	260	12	16	142	-	20
PA,M....	177	14	136	27	-	584	65	60	304	155	-	8
PA,W....	1,892	27	1,469	356	-	349	116	8	176	38	11	16
VI......	911	534	371	-	6	24	-	24	-	-	-	-
4TH...	6,484	1,046	4,919	360	259	4,116	628	160	1,432	1,903	113	832
MD......	776	274	427	36	39	692	111	23	251	306	1	246
NC,E....	1,327	125	1,078	87	37	366	74	10	239	43	-	98
NC,M....	1,026	100	880	33	13	314	67	14	204	28	1	15
NC,W....	133	-	109	8	16	163	36	19	95	13	-	-
SC......	875	108	663	46	62	1,131	158	90	318	523	82	195
VA,E....	1,378	70	1,217	-	91	214	107	-	20	84	3	81
VA,W....	586	362	195	29	-	500	4	1	45	447	1	175
WV,N....	176	4	145	27	-	293	45	13	147	87	1	57
WV,S....	217	6	200	9	1	443	24	10	13	372	24	48
5TH...	24,284	4,709	17,391	475	1,709	5,490	1,355	365	2,445	1,030	295	545
LA,E....	6,983	1,741	4,951	121	170	1,028	155	23	429	226	195	245
LA,M....	166	14	145	3	4	404	28	-	363	13	-	19
LA,W....	2,239	104	2,025	12	98	611	200	6	162	228	15	4
MS,N....	3,433	221	3,171	41	-	285	35	1	111	135	3	5
MS,S....	6,555	1,177	5,213	94	71	379	65	1	71	164	78	109
TX,N....	1,001	695	244	52	10	472	234	72	124	42	-	18
TX,E....	437	222	150	48	17	426	75	83	256	11	1	98
TX,S....	1,889	475	1,263	74	77	868	252	37	545	33	1	13
TX,W....	1,581	60	229	30	1,262	1,017	311	142	384	178	2	34
6TH...	15,556	2,325	10,986	1,162	1,115	10,142	1,400	534	3,471	4,388	359	763
KY,E....	1,754	74	1,543	127	10	705	90	151	104	342	18	36
KY,W....	222	65	104	42	11	928	215	21	496	193	3	13
MI,E....	3,003	337	2,404	115	147	2,633	203	64	639	1,696	31	7
MI,W....	1,767	276	1,400	19	72	610	96	7	225	282	-	1
OH,N....	3,032	557	2,054	269	32	860	113	42	100	604	1	531
OH,S....	4,235	646	2,441	250	898	2,442	275	21	948	838	260	104
TN,E....	1,037	344	701	90	2	831	137	6	398	278	12	99
TN,M....	57	35	9	13	-	441	30	12	310	79	30	11
TN,W....	371	21	330	17	3	692	161	200	251	76	4	3

TABLE [illegible] U.S. DISTRICT COURTS
PROCEEDINGS AND CASES DISPOSED OF BY U.S. MAGISTRATES
PURSUANT TO TITLE 28 U.S.C. SECTIONS 636(B) AND (C)
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, [illegible]

CIRCUIT AND DISTRICT	CIVIL PROCEEDINGS					CIVIL CASES						SECTION 636(C)
							PRISONER PETITIONS					
	TOTAL CIVIL MATTERS	PRETRIAL CONFERENCES	636(B)(1)(A)	636(B)(1)(B)	OTHER	TOTAL CIVIL CASES	STATE	FEDERAL	CIVIL RIGHTS	SOCIAL SECURITY	SPECIAL MASTER	CONSENT CASES
7TH...	16,464	4,546	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
IL,N....	3,643	1,137	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
IL,C....	5,520	1,676	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
IL,S....	835	101	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
IN,N....	582	470	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
IN,S....	5,138	974	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WI,E....	237	28	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WI,W....	409	160	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
8TH...	10,943	2,610	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
AR,E....	235	5	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
AR,W....	72	5	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
IA,N....	832	266	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
IA,S....	937	678	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MN......	3,744	956	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MO,E....	1,101	89	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MO,W....	2,241	148	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NE......	1,513	270	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
ND......	260	185	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD......	8	8	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
9TH...	14,906	4,389	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
AK......	792	54	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
AZ......	34	23	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
CA,N....	1,817	815	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
CA,E....	970	263	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
CA,C....	1,804	266	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
CA,S....	2,057	1,570	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
HI......	1,226	689	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
ID......	110	33	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MT......	108	79	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NV......	2,062	122	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OR......	3,052	370	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WA,E....	271	1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WA,W....	605	104	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
10TH..	11,884	6,105	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
CO......	3,088	2,636	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
KS......	4,951	1,394	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NM......	1,141	182	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OK,N....	445	157	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OK,E....	146	124	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OK,W....	972	884	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
UT......	683	489	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WY......	458	239	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
11TH..	10,176	987	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
AL,N....	380	196	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
AL,M....	-	-	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
AL,S....	1,134	28	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
FL,N....	1,873	18	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
FL,M....	4,116	943	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
FL,S....	1,178	94	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
GA,N....	678	42	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
GA,M....	-	-	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
GA,S....	817	66	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

TABLE M-5 U.S. DISTRICT COURTS
EVIDENTIARY PROCEEDINGS CONDUCTED BY U.S. MAGISTRATES
PURSUANT TO TITLE 28 U.S.C. SECTIONS 636(B) AND (C)
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1984

CIRCUIT AND DISTRICT	HEARINGS (SECTION 636(B)(1)(B))						SPECIAL MASTER (SECTION 636(B)(2))			CONSENSUAL CIVIL CASES TERMINATED (SECTION 636(C))			
				PRISONER PETITIONS								AFTER TRIAL	
	TOTAL	CRIMINAL	CIVIL	STATE HABEAS	FEDERAL HABEAS	CIVIL RIGHTS	TOTAL	WITH HEARING	WITHOUT HEARING	TOTAL	WITHOUT TRIAL	JURY	NON-JURY
TOTAL...	3,702	1,887	1,208	234	80	615	1,079	461	618	4,060	3,976	771	612
DC......	21	19	2	-	-	-	10	6	4	29	20	13	3
1ST...	104	67	89	6	-	2	4	3	1	108	84	8	16
ME......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MA......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NH......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
RI......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PR......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2ND...	194	60	98	16	6	21	89	19	86	160	104	26	28
CT......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NY,N....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NY,E....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NY,S....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NY,W....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
VT......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3RD...	79	6	20	9	11	28	26	13	13	94	80	8	21
DE......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NJ......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PA,E....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PA,M....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PA,W....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
VI......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4TH...	809	76	123	80	9	90	113	22	91	632	664	67	101
MD......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NC,E....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NC,M....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NC,W....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SC......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
VA,E....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
VA,W....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WV,N....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WV,S....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
5TH...	486	80	160	83	10	201	290	61	236	888	813	52	140
LA,E....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
LA,M....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
LA,W....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MS,N....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MS,S....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TX,N....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TX,E....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TX,S....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TX,W....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
CZ......	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
6TH...	588	21	69	22	10	150	309	90	288	763	694	31	73
KY,E....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
KY,W....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MI,E....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MI,W....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OH,N....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OH,S....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TN,E....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TN,M....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TN,W....	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

TABLE M-4 U.S. DISTRICT COURTS
EVIDENTIARY PROCEEDINGS CONDUCTED BY U.S. MAGISTRATES
PURSUANT TO TITLE 28 U.S.C. SECTIONS 636(B) AND (C)
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1986

CIRCUIT AND DISTRICT	HEARINGS (SECTION 636(B)(1)(B))						SPECIAL MASTER (SECTION 636(B)(2))			CONSENSUAL CIVIL CASES TERMINATED (SECTION 636(C))			
				PRISONER PETITIONS								AFTER TRIAL	
	TOTAL	CRIMINAL	CIVIL	STATE HABEAS	FEDERAL HABEAS	CIVIL RIGHTS	TOTAL	WITH HEARING	WITHOUT HEARING	TOTAL	WITHOUT TRIAL	JURY	NON-JURY
7TH...	113	38	27	5	-	43	51	6	45	886	771	44	71
IL,N....	25	7	17	1	-	-	12	3	9	170	152	3	15
IL,C....	3	2	1	-	-	-	-	-	-	69	49	10	10
IL,S....	35	-	-	4	-	31	36	1	35	263	235	7	21
IN,N....	15	-	3	-	-	12	-	-	-	240	206	19	15
IN,S....	5	-	5	-	-	-	3	2	1	36	31	1	4
WI,E....	19	19	-	-	-	-	-	-	-	99	89	4	6
WI,W....	11	10	1	-	-	-	-	-	-	9	9	-	-
8TH...	850	483	267	15	5	80	80	40	40	353	233	75	45
AR,E....	30	-	1	5	2	22	1	-	1	3	2	-	1
AR,W....	12	-	2	2	-	8	-	-	-	7	2	3	2
IA,N....	77	-	77	-	-	-	-	-	-	79	69	6	4
IA,S....	9	-	1	2	-	6	-	-	-	55	39	7	9
MN......	189	168	20	-	1	-	3	2	1	32	27	3	2
MO,E....	309	231	70	6	-	2	1	-	1	131	66	48	17
MO,W....	165	58	64	-	2	41	75	38	37	32	18	8	6
ND......	49	25	24	-	-	-	-	-	-	14	10	-	4
NE......	9	1	7	-	-	1	-	-	-	-	-	-	-
SD......	1	-	1	-	-	-	-	-	-	-	-	-	-
9TH...	397	200	154	12	4	27	58	17	41	1,009	908	39	62
AK......	101	27	67	3	-	4	-	-	-	-	-	-	-
AZ......	19	1	-	4	1	13	-	-	-	2	-	-	2
CA,N....	18	13	5	-	-	-	13	7	6	26	14	2	10
CA,E....	24	20	4	-	-	-	-	-	-	25	23	-	2
CA,C....	32	9	20	1	1	1	5	4	1	31	20	6	5
CA,S....	41	18	23	-	-	-	1	-	1	30	26	2	2
HI......	20	19	1	-	-	-	-	-	-	-	-	-	-
ID......	13	4	6	1	-	2	17	6	11	26	24	1	1
MT......	10	1	-	3	-	6	9	-	9	69	61	5	3
NV......	85	67	16	-	2	-	1	-	1	1	-	1	-
OR......	8	5	3	-	-	-	8	-	8	731	696	15	20
WA,E....	-	-	-	-	-	-	-	-	-	110	95	3	12
WA,W....	26	16	9	-	-	1	4	-	4	58	49	4	5
GUAM....	-	-	-	-	-	-	-	-	-	-	-	-	-
NMI.....	-	-	-	-	-	-	-	-	-	-	-	-	-
10TH..	168	3	110	14	5	36	1	1	-	96	89	1	6
CO......	41	2	8	2	3	26	1	1	-	-	-	-	-
KS......	3	1	2	-	-	-	-	-	-	64	64	-	-
NM......	6	-	1	5	-	-	-	-	-	2	2	-	-
OK,N....	8	-	3	3	2	-	-	-	-	3	2	-	1
OK,E....	-	-	-	-	-	-	-	-	-	-	-	-	-
OK,W....	95	-	95	-	-	-	-	-	-	11	11	-	-
UT......	14	-	1	4	-	9	-	-	-	1	-	-	1
WY......	1	-	-	-	-	1	-	-	-	15	10	1	4
11TH..	639	299	139	53	19	169	27	14	13	62	43	8	11
AL,N....	50	15	9	13	3	10	13	5	8	-	-	-	-
AL,M....	77	-	-	16	4	57	-	-	-	-	-	-	-
AL,S....	66	-	1	6	1	58	6	5	1	8	4	3	1
FL,N....	14	2	8	1	2	1	-	-	-	26	19	4	3
FL,M....	133	86	30	9	2	1	-	-	-	6	4	1	1
FL,S....	107	107	63	2	2	3	2	-	2	17	14	-	3
GA,N....	112	85	17	6	4	-	6	4	2	4	1	-	3
GA,M....	-	-	-	-	-	-	-	-	-	-	-	-	-
GA,S....	30	4	11	-	1	14	-	-	-	1	1	-	-

PREPARED

STATEMENT OF CALEB SHIELDS
Fort Peck Tribal Executive Board
Before the
Senate Select Committee on Indian Affairs
on
S.1177

Mr. Chairman and members of the Committee, my name is Caleb Shields. I am a member of the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana. I appreciate the opportunity to present this testimony in support of S.1177, Senator Melcher's bill to establish special magistrates in Indian country.

I have testified in support of similar bills on several occasions over the past six years. As I will explain further in a moment, this bill would be very beneficial to the Fort Peck Tribes, and we would like to see it enacted. Although we realize that its enactment this late in the session is very unlikely, we ask that the bill be reintroduced early next year and that the Committee move it quickly.

Also, we suggest a change in the bill that we think would help attract more tribal support. A few tribes -- unlike Fort Peck -- are satisfied with the system of federal prosecutions on their reservations, and therefore would not support mandatory use of special magistrates. We suggest that the bill be amended to provide that tribes can opt not to have the services of a special magistrate on their reservations. This should not be a controversial amendment, as it will save money.

S.1177 is very important to my Reservation. At Fort Peck, as on many Indian reservations, federal law enforcement has been seriously deficient. Under existing law, federal magistrates can try offenders only with their consent. A person who refuses to consent must be tried in federal court by a federal judge. United States attorneys generally are reluctant to prosecute minor crimes, and most federal judges do not like to try them. Federal law enforcement for minor crimes on reservations becomes ineffective when a person charged with such a crime can insist on being tried in federal district court.

The problem is particularly serious where non-Indians are charged with crimes to which an Indian is the victim. While tribes have concurrent jurisdiction to try and punish Indian offenders, the United States Supreme Court has held in the Oliphant case that tribal courts have no jurisdiction over non-Indians committing crimes on reservations. The State also has no jurisdiction to prosecute a non-Indian who commits such a crime against an Indian. Only the United States has jurisdiction over such offenses.

Indeed, except for major crimes, federal jurisdiction is infrequently exercised. The most common crimes on our Reservation -- such as assaults or small burglaries -- simply are not prosecuted in many instances. In large part, this is because the necessary federal resources have not been allocated to meet the law enforcement needs of Indian reservations. Existing federal law enforcement is generally distant from reservations. For example, the federal courts, United States Attorneys, and FBI agents in Montana are in Billings and Great Falls, over 250 miles away from our Reservation. In addition, United States Attorneys often have more work than they can handle and typically assign a low priority to the prosecution of offenses on Indian reservations. As a consequence, crimes are committed virtually without fear of prosecution or punishment. This is an absolutely intolerable situation. If criminals go unpunished, of course, criminal activity is not deterred. Lawlessness prevails.

An expanded role for United States magistrates is essential to remedy this problem. We strongly support Senator Melcher's proposal to establish special magistrates for Indian country with mandatory jurisdiction over crimes committed on Indian reservations. New special Indian country magistrates are needed even though United States magistrates are already authorized to try minor offenses committed on Indian reservations. Most magistrates are part-time only, are limited in their assignments, and seldom devote time to Indian reservation matters.

We strongly support the provision of S.1177 that would require appointment of additional United States Attorneys to prosecute crimes in Indian country. We have requested such a provision in the past, and are glad to see that it has been added. Special magistrates would be of little use if there were no prosecutors to try the cases. In fact, in some areas an additional prosecutor may solve the problem, without the need for a special magistrate.

We propose one additional provision for the bill. We think the legislation should expand the scope of the magistrates' current jurisdiction on Indian reservations. Magistrates can now only hear "minor" criminal cases with a maximum penalty of one year in jail or a $1,000.00 fine, or both. On Indian reservations like Fort Peck, where magistrates provide the only readily available federal form for law enforcement, this limitation allows some serious crimes to go unprosecuted. This can include assault crimes, which are very common at Fort Peck. We believe that power should be delegated to magistrates on Indian reservations to try all crimes other than those serious felonies enumerated in the Major Crimes Act, 18 U.S.C. 1153.

The proposed legislation would greatly benefit both Indians and non-Indians living on reservations. For too long there has been a major vacuum instead of effective federal law enforcement on Indian reservations. We welcome the Committee's efforts to seek to change this deplorable situation, and urge the Committee to give this matter priority consideration in the next Congress.

Thank you for the opportunity to present this testimony. I would be happy to answer any questions you may have.

PREPARED STATEMENT OF GERALD ANTON

Mr. Chairman, Members of this Committee:

I am Gerald Anton, President of the Salt River Pima-Maricopa Indian Community. On behalf of the Community and the Community Council, I wish to thank you for asking me here today to testify in support of S. 1177.

The Salt River Pima-Maricopa Indian Community recognizes the urgent need to provide a viable system to adjudicate criminal offenses on Indian reservations. The void left by the Oliphant decision has had an adverse effect on Indian people across the country. S. 1177 would, if enacted and fully implemented, construct a criminal law safety-net.

On July 26, 1983, the Salt River Pima-Maricopa Indian Community presented a memorandum to the members of the Arizona Congressional delegation regarding criminal jurisdiction over misdemeanor offenses by non-Indians within Indian country. The dialogue that the memorandum engendered led the Community to believe that such legislation ought to be addressed specifically to individual tribes in response to specific circumstances and in cooperation with neighboring non-Indian communities. S. 2564 was introduced to deal solely with criminal jurisdiction within the Salt River Pima-Maricopa Indian Community.

We believe that Indian Tribes ought to be able in appropriate circumstances to fully exercise their governmental authority to enforce their criminal laws. For our Community S. 2564 is the better solution to the problem that both bills address. S. 1177 recognizes the possibility that different solutions will work in different tribal situations. So that Section 651(a) speaks of the President appointing magistrates ". . . as may be necessary. . . ."

The Salt River Pima-Maricopa Indian Community position in regard to S. 2564 is supported by the Mayors of each of the cities in the vicinity of the Community, by the local county supervisor and by the Governor and Attorney General of Arizona. It is made necessary by the location of the Salt River Pima-Maricopa Indian Community within the Phoenix Metropolitan area and the presence of residents of our neighboring cities as commuters traveling through the Community and tourists using recreational facilities and opportunities.

The confluence of need and the unqualified support of local, state and federal officials impels S. 2564 as the solution for our Community. The existence of a need for adequate law enforcement elsewhere in Indian country should engender support for the more general benefits of S. 1177. Our concern is that the enactment of S. 1177 not be the only solution for the differing concerns of different Indian Communities and Tribes located in different places and functioning in different circumstances.

PREPARED STATEMENT OF ROBERT FAST HORSE

Mr. Chairman, this Bill would accomplish one single major objective: There would be more Native Americans in federal prisons than ever before. By the mere presence of a U.S. Attorney General and a Federal Magistrate on Indian reservations, the number of federal prosecutions would increase of Indian defendants. The only provision lacking in the Bill is the establishment of special federal prisons to handle the increase of federal Indian prisoners.

It is conceiveable that the local Indian agent or the Bureau of Indian Affairs Superintendent could have his title changed legislatively to that of Warden. And the installed or appointed Federal Magistrate, the U.S. Attorney and the local B.I.A. Superindent would work in concert in retaining many federal prisoners for domestic purposes thus eliminating the need for new federal facilities to house the increase of federal Indian prisoners. This would also substantiate the claim Indian reservations are nothing more than contemporary concentration camps.

We vehemently oppose the Bill being enacted into law. It is said that the Bill is designed to close the existing jurisdictional gaps and sharpen the focus of prosecutorial vision in prosecution of crimes on Indian reservations. If the logic of this statement were taken to its fullest extent then Congress should possibly contemplate the passage of law establishing special magistrates and prosecutors to attack your real problem of devastating proportion affecting all races, ages, gender and creed in America and that is your drug traffic, addiction, and drug related crimes. There are more problems regarding who prosecutes and which jurisdiction prosecutes drug use and traffic than exists confusion on who will prosecute Indians on reservations.

There exists better alternatives to close the jurisdictional gaps purported to exist. The first would be to strengthen tribal courts enabling them the authority and jurisdiction over all offenses and offenders. As it exists now under the recent U.S. Supreme Court decision popularly cited as the Oliphant decision, tribes may only prosecute members of their own tribe and tentatively members of federally recognized tribes.

Tribal courts should be appropriated monies wherein public defense could be provided to indigent defendants and jury trials for those who request trials by jury. When a major crime is committed triggering federal jurisdiction, there exists the need for policy and written agreement between tribal prosecutors and the U.S. Attorney General's Office as to the handling of these cases. If the tribe's jurisdiction were to be expanded with sufficient funds appropriated according to public defense, jury trials and written policy by legislation, memorandums of understanding or cooperative agreements between federal and tribal prosecutors, there would be no need to install federal prosecutors and magistrates in Indian Country.

Mr. Chairman, if worst comes to worst, and the Bill is seriously considered for passage, then we recommend the following input:

1. The selection and appointment of federal magistrates and Assistant U.S. Attorney Generals should follow Indian Preference guidelines wherein these positions be filled by Native Americans with certain required kmowledge and understanding of Native custom, tradition, religion, and languages.

2. The Indian tribes should have a direct hand in the selection process wherein such persons must be satisfactory to tribal councils and their appointment be ratified by the tribal council wherein they will be installed.

3. The Doctrine of Sovereign Immunity will not be waived by the passage of this Bill.

4. The federal magistrate be authorized to appoint professional public defense for indigent defendants.

5. The Bill should include special federal Indian prisoners programs affording innovative rehabilitation programs for federal Indian prisoners; and

6. Local law enforcement be given specific guidelines as to which arrests are to be tribal, state, or federal to prevent arbitrary and punitive actions against a select few and favoring others.

Thank you for the opportunity to provide testimony on this Bill. We hope you seriously reconsider the passage of this Bill into law. We feel it would be detrimental to our people. Congress should instead consider the President's Statement concerning the development of viable economies on reservations. We feel if a person is properly sheltered, employed, fed, and accorded respect as to his special heritage and identity, then many of the negative socio-economic conditions and statistics will, in a matter of time, dissipate.

Thank you,

ROBERT FAST HORSE
CHIEF JUDGE
OGLALA SIOUX TRIBAL COURT

PREPARED STATEMENT OF SUZAN SHOWN HARJO

On behalf of the National Congress of American Indians, I thank you for the opportunity to present testimony on S. 1177, The Indian Reservation Special Magistrate Act.

While the goal of the legislation is worthy - to stem the tide of crime by providing justice for the perpetrators and the victims of crime in Indian country, our view is that S. 1177 is wrongly directed in that it would impose another layer of non-Indian law enforcement on Indian land. We would favor legislation designed to remove barriers that stand in the way of tribal means to deal with crime in culturally appropriate ways under the control of the community of interest.

We all are aware of the high incidence of crime by Indian and non-Indian people on Indian land, of the tribes' inability to prosecute many crimes and of the state and federal authorities' failure to prosecute the majority of crimes under their jurisdiction. The tribes' lack of prosecution is the direct result of legal prohibitions by the United States, while the state and federal authorities' failure to prosecute involves a combination of factors, including lack of adequate funding, geographic obstacles involved in gathering defendants and witnesses to build a good case and an oftentimes less than vigorous interest in pursuing the matter.

In 1985 under the Freedom of Information Act, the Denver Post obtained information to document the discrepency between the number of crimes reported on Indian land versus the number of crimes prosecuted or convictions gained. The Post found that:

1. Federal officials in Montana received 484 reports of major crimes from six reservations, but obtained only 36 convictions in federal court;

2. Of the 145 rapes, murders and assaults with deadly weapons in 1982 and 1983 in North and South Dakota reported to the Bureau of Indian Affairs Area Office, only 32 of these crimes were prosecuted in federal court;

3. Of 1051 felony cases in which tribal police, BIA investigators or Federal Bureau of Investigation agents requested U.S. Attorneys in Montana, New Mexico and Arizona to prosecute, only 337 were taken to court:

4. Nationally, U.S. Attorneys in 1983 declined to prosecute 70% of the major crimes on Indian reservations, compared to a 50% declination rate for all crimes in the same year. The figures for 1984 show a declination rate of 76% for Indian crimes and 62% for all crimes.

According to the FBI, 185 out of every 100,000 Americans residing in rural areas were the victims of violent crimes. The rate for Indian people on reservations is nearly double that, or 323 for every 100,000 people. The number of murder victims on reservations is 14.3 per 100,000 people, compared to 6.8 per 100,000 in rural America and 9.1 per 100,000 people nationally.

When major crimes by Indian people on reservations are not prosecuted by U.S. Attorneys, tribes choose the only available remedy, which is reduction of the charge to a misdemeanor and prosecution in tribal court where the maximum allowable penalties are six months in jail and a $500 fine. In addition to the punishment not fitting the crime, any tribal judicial proceeding must wait until the U.S. Attorney makes a decision to not prosecute the case, thus often denying the defendant a speedy trial. In the area of penalties, we would recommend that, as a minimum, the allowable tribal court penalties be raised to $1000 and one year in prison. We do recognize, however, that some tribes do not have adequate dtention facilities to have a number of people incarcerated for a long period of time.

We suggest that a more appropriate approach would be one that would address the problem by strengthening tribal court systems and removing the limitations imposed on Indian nations in the area of law enforcement. This would be consistent with tribal and federal policy regarding strengthening tribal governments and for replacing paternalism with self-determination.

The federal magistrate concept has the advantage of having someone on or near the reservation, as opposed to the current situation where defendants and witnesses have to travel long distances to federal courts. However, the tribal judicial systems already are in place in Indian country. Under S. 1177, the federal magistrate would have to be a member of the state bar, but there is no requirement for membership in an existing tribal bar, no requirement that the magistrate be an Indian, or be knowledgeable about tribal law, history and customs, and no requirement for any tribal consultation or input regarding the person chosen to be magistrate.

We do not know the cost of placing a full-time or part-time magistrate in every Indian territory, as the bill authorizes such sums as may be necessary, but it is obvious that the cost of the legislation would be substantial and likely would receive appropriations at a level far below the intent. We would prefer that such funds as may be available be expended to provide assistance for more tribal judges and court personnel, where the tribes wish to develop this system, for more professional training of court and law enforcement personnel, where this is identified as a priority need, and for tribal code development, as appropriate.

In addition to funds for desired court development, also required is a change in the law which would return tribal jurisdiction over non-Indians on Indian lands to the applicable Indian government. Indian people, after all, are subject to state jurisdiction when on state lands. We all are subject to the laws governing conduct on foreign soil. It is denigrating to tribal governments and dangerous to Indian people to allow non-Indian people to escape tribal jurisdiction when they are on Indian land.

In recognition that the level of tribal and law enforcement capabilities vary from tribe to tribe, we would suggest tribal assumption of major crimes jurisdiction as individual tribes are able to assume this responsibility. In lieu of tribal assumption of major crimes, we believe that assimilation in federal courts of tribal definitions of crimes and enforcement for major crimes is an idea worth pursuing. Currently, state law is assimilated when there is no federal law with regard to major crimes. For offenses committed on Indian land, tribal definition and penalties should be assimilated. We recognize that this would require federal judges and U.S. Attorneys to become familiar with tribal law, which would increase their knowledge of Indian peoples and governments and traditions, as well.

We would point out that Representative John Conyers, Chairman of the House Judiciary Subcommittee on Criminal Justice, is interested in introducing legislation regarding expansion of Indian jurisdictional authorities., We urge this Committee to become involved in this effort to address the complex problems of crimes in Indian country.

In conclusion, we greatly appreciate Senator Melcher's effort to address the problem of unprosecuted crimes in Indian country. We do propose an approach which will not increase federal or state presence on Indian lands, but rather will assist tribes in removing the limitations on authorities and attaining the resources necessary to address problems of crime in appropriate, tailored ways designed to better serve the interests of all people.

Thank you for inviting our views.

PREPARED STATEMENT OF RAY FIELD

Mr. Chairman, my name is Ray Field, Executive Director of the National Tribal Chairmen's Association. As you know, NTCA is an organization composed of 185 chairmen of federally recognized Indian tribes. We are grateful for the opportunity to appear before you today to offer our comments on S. 1177, a bill "To establish a special magistrate with jurisdiction over Federal offenses within Indian country". We appreciate your demonstrated concern for the problems of administration of justice in Indian country. Since 1980, you have consulted with tribes through hearings, informal meetings, and correspondence. From that consultation, a bill more nearly tailored to the needs of Indian tribes has developed. We view this hearing as one more opportunity to present our views to you in the hope of refining the excellent concept embodied in S. 1177.

I am prepared to offer today the National Tribal Chairmen's Association's recommendations for your consideration. It is my understanding that because of the lateness of the legislative hour, we cannot expect that S. 1177 will be enacted this Congress.

There are serious administration of justice inadequacies in Indian country, particularly since Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978) held that Indian tribes do not have criminal jurisdiction over non-Indians. The hearing record which you have established illustrates those problems very well. United States attorneys and the Federal Bureau of Investigation have heavy case loads and resulting priorities, and in some instances attitudes, which cause neglect of prosecution of offenses by non-Indians in many areas of Indian country.

Placing a magistrate in problem areas of Indian country and particularly appointing assistant United States attorneys whose primary responsibility will be the prosecution of crimes and offenses before the magistrate will be very helpful.

The hearing record demonstrates your desire to deal with the problem of presenting evidence in minor offense cases; however, we believe the bill does not address that problem.

Section 654(d) does authorize tribal and Bureau of Indian Affairs police officers to execute warrants, summons, subpoenas, and orders which the magistrate is authorized to issue. This does help immensely in enabling the police officer to secure a warrant for arrests. Presently, particularly at night and on the weekends when the United States attorney and the nearest federal magistrate or judge is miles away, getting an arrest warrant can be a problem.

The bill does not, however, provide specifically that local police officers may present evidence at arraignment or preliminary hearings. We understand that National Park Service officers are doing this in some instances and that in at least one case the constitutionality of that has been upheld. Apparently, however, this is done through some agreement with the magistrate, the United States attorney and the National Park Service. If this is to be done before the magistrate in Indian country, as the bill now stands, that arrangement would be dependent on an agreement being worked out with the magistrate, the United States attorney and the local tribal or Bureau police. If it is desirable for the local police also to present evidence without the assistance of the United States attorney at the trial of minor offenses, that too would have to be worked out under the present bill through an agreement. We believe the constitutional problems would increase if the local police presented evidence without the assistance of the United States attorney at the trial stage.

Another way in which the presentment of evidence is a problem in Indian country is the presenting of evidence by tribal and Bureau police even when the United States attorney participates in the arraignment, the preliminary hearing and the trial of the case. At any one of those stages, but particularly at the trial stage, many United States attorneys are reluctant to deal with and to accept presentment of evidence from tribal and Bureau police. In some areas agreements have been worked out so that United States attorneys do accept presentments from tribal and Bureau police. Phoenix is one of those areas. S. 1177 does not deal specifically with the reluctance of United States attorneys.

If a magistrate bill is enacted, we recommend that it include a specific provision allowing presentment of evidence at the arraignment by tribal and Bureau police officers. We also recommend inclusion of a provision which would preclude the refusal by the United States attorney to accept evidence presented by tribal and Bureau police at the arraignment, preliminary hearing and trial based solely on the fact that the evidence is presented by a tribal or Bureau police officer.

This problem of presentment of evidence is a very technical one which deserves further analysis by experienced criminal lawyers, police officers and magistrates. In reviewing previous hearing records, in talking with employees and former employees of the Department of the Interior, we identify a serious lack of specificity in the statement of the problem. Naturally, any effort to address the problem in the bill should be made only after a thorough study of the problem and consultation with experienced and knowledgeable individuals. We recommend, Senator, that a technical study of this issue be made.

We are concerned that implicit in the concept of the magistrate bill is the assumption that tribal courts are incapable and probably politically unacceptable to handle jurisdiction over offenses by non-Indians on Indian reservations. Tribal courts and police are in many situations both competent and politically acceptable to local non-Indians. We do not believe the political unacceptability of the tribal governmental institutions is an acceptable basis for denying tribes jurisdiction over non-Indians.

In addition, the American Indian Policy Review Commission in 1977 identified misguided and unsuccessful federal policy resulting from congressional efforts to deal with Indian problems in one monolithic piece of legislation. Certainly the General Allotment Act and Pub. L. 83-280 are examples. The Indian Child Welfare Act, on the other hand, has been enormously successful in that it has flexible jurisdictional provisions which do not require, but rather authorize, tribes to elect to retrocede all or partial jurisdiction over Indian child custody in Pub. L. 83-280 states and authorize tribes and states to negotiate agreements for a specific allocation of jurisdiction between them.

It is a flexible approach which we recommend to you today. We would like for the bill to contain a provision authorizing the placement of a magistrate to serve each Indian reservation and area of Indian country upon the request of the appropriate tribal government. We recommend that in addition the bill contain a provision that would authorize jurisdiction over non-Indians by tribes upon their meeting qualifying criteria.

We are also concerned that wholesale establishment of magistrate courts with jurisdiction over offenses on Indian reservations will undermine the ability of tribes ever legislatively to regain criminal jurisdiction over non-Indians.

Moreover, in this era of reduced federal spending, the magistrate courts would compete for scarce federal dollars with tribal courts.

There is one particular jurisdictional matter we want to bring to your attention. Under the General Crimes Act, 18 U.S.C. § 1152, federal courts do have jurisdiction over an Indian who commits an offense against a non-Indian and who has not yet been punished by the tribe. (Theoretically, at least, the federal courts have jurisdiction over a victimless offense by an Indian who has not been punished by the tribe.) If a magistrate bill is enacted, we recommend the inclusion of procedures to insure that Indian defendants are not prosecuted in magistrate court until the tribe has declined prosecution. This will prevent the possibility of an overly aggressive assistant United States attorney trying to "beat the tribe in the race to the courthouse."

No matter how well-intended the appointment of special magistrates to Indian reservations, and no matter how great the need for improved administration of justice on Indian reservations, the appointment of special magistrates to serve Indian country is implicitly an intrusion into tribal self-government. Granted the need arises from the Supreme Court's decision in Oliphant; and over that decision, we have no control. We do have control over the response to the need. We have discussed the flexibility approach above. In addition, we recommend that the bill provide for appointment by the President of special magistrates from a list of qualified candidates compiled and submitted to the President by the Indian tribal government with jurisdiction over the particular Indian country, and that preference be accorded to qualified Indian candidates. Finally, we recommend that the appointment of assistant United States attorneys whose primary responsibilities will be the prosecution of crimes and offenses before the special magistrates, be made by the Attorney General from a list of qualified candidates compiled and submitted to the Attorney General by the Indian tribal government with jurisdiction over the particular Indian country, and that preference be accorded to qualified Indian candidates.

Mr. Chairman, this concludes my comments. I will be glad to answer any questions that you have and to work with your staff in the further development of legislation to meet the needs for improved administration of justice in Indian country.

PREPARED

STATEMENT OF JAMES A. McCANN, COUNTY ATTORNEY
ROOSEVELT COUNTY, WOLF POINT, MT

My name is Jim McCann. I have been a prosecutor for Roosevelt County for over twenty years. Also, in a part of that time, I spent five years as the U. S. magistrate serving the Fort Peck Reservation at Wolf Point. It has been my concern all of these years to bridge the gap, if you will, of the offenses that go unprosecuted, either in the tribal court or in the state district court or the federal court. Unprosecuted partly because of the reasons of jurisdiction and partly because the burden of cases is such that the federal court just could not handle all of the misdemeanor and minor offenses that would be and probably should be brought before it.

Since early 1970's, I have been in correspondence with U. S. senators to encourage the adoption of a bill that would grant broader jurisdiction to the U. S. magistrate to accept complaints on a local level without going through the U. S. Attorney's office in Billings or Great Falls or Butte, and without the necessity of having the matter be referred to and investigated by the Federal Bureau of Investigation before the matter was presented.

Specifically, I am speaking of the types of cases that have come across my desk as county attorney first; cases where I had a terrible time in justifying my actions. The law precluded me from doing anything but what I did. These were in the area of misdemeanor assaults, primarily misdemanor assaults committed by non-Indians against Indian persons. It has always been the understanding of myself and various defense counsel who have appeared in cases where I did attempt to present cases to the court based on facts where the victim would be an Indian and the defendant would be a non-Indian, that we lacked jurisdiction. They were dismissed at the local level, and they were never appealed.

However, in 1983, an appeal was brought up off the Crow Reservation, based on those types of facts, that went to the Montana Supreme Court. The Montana Supreme Court said that the State did indeed not have jurisdiction over those types of offenses. The court said all of the offenses that were committed by or against Indian persons within the exterior boundaries of the reservation are under the exclusive jurisdiction of the federal court.

The cases that I have had to reject or to deny prosecution on were sometimes serious, in that maybe the injuries were not so serious, but that the social structures that were damaged by the actions of whatever individual might have caused the assault, were serious. Whether it would be in a school setting or whether it be in a social setting or even business setting in the streets, social fabric is damaged. For that reason, I felt it incumbent upon the federal courts to have a forum in which these cases could be brought.

Repeat offenders: I had two situations in the county where there were repeat offenders who committed three or more assaults, minor misdemeanor assaults against Indian persons. After the third offense, I was successful in prevailing upon the U. S. Attorney to do something about it. One-time offenders, nothing was ever done.

The tribal courts do not have jurisdiction over the non-Indian offender. The state court does not have jurisdiction over the subject matter, being the Indian victim. So here we were without the forum.

Now, I think that Senate Bill 1177 beautifully addresses the problem. I wholeheartedly support the bill. I think that all of the problems that we have had can be resolved if the bill should pass, even on an experimental basis, on one or two reservations that would try it out and would show that the bill does have merit. It is very beneficial legislation to the people who live on the reservations.

It is also very important to the proper function of the Special Magistrate Court that there be an attorney who would attend the prosecution of the cases. The bill properly authorizes local law enforcement officers to directly present a case to the magistrate. There needs to be some machinery set up whereby either a special deputy U. S. attorney will be on hand to prosecute those cases, or to have a resident attorney that would be designated to do that, such as the various designees in other agencies.

I think that from my experience as prosecutor, the need for an attorney on hand at all times probably is not going to be terribly great once some format is drawn for the presentation of the complaint and the language to be used. I do not think it is the proper function for the magistrate himself to take the complaint. However, as magistrate, I did do that a time or two. There was no U. S. attorney available. I would try to step aside and take one of the other attorneys in my office to sort of serve as the prosecutor and, with my secretary's assistance, draw up the complaint. That is not a good situation, because that puts the judge in a position of having the information available to him firsthand, beyond the basics of trying to establish mere probable cause for filing the charge.

I do not think that the function of the judge, whether he be magistrate or district judge or even tribal judge, should be such that he would have all of the information that would go toward the establishment of proof beyond a reasonable doubt at the initial stage of the process. In that view also, after the document is drawn and it is filed and a plea is entered, my experience is that a tremendous percentage of them are probably going to enter a plea, or they will be negotiated to some social status, or something will be done with it other than the full-blown criminal trial. The actual jury trial, where it would be necessary to have the prosecutor there, probably will be at a minimum. I do not have a number that I could even throw at you to give you an idea.

It is possible that experience with a test system will indicate that the services of a clerical or para-legal assistant will be sufficient.

If the magistrates have a manual available to provide a format for the drafting of documents, the investigating officer could present the facts establishing the offense to the assistant who could then prepare the charging document. The officer could then sign it under oath in front of the magistrate. Then it may be at some subsequent date an attorney would have to become involved in the case. You know, if the charge is properly brought, it is reviewed by defense counsel, maybe hired or appointed on behalf of the defendant, and after discussion of the case with his client, they may wish to enter a plea. That happens a lot, especially in misdemeanor cases.

It may prove to be unnecessary to have an attorney full-time whose only responsibility on a remote reservation was to draft documents and infrequently prosecute a misdemeanor.

THE NAVAJO NATION
WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515

PETERSON ZAH
CHAIRMAN, NAVAJO TRIBAL COUNCIL

EDWARD T. BEGAY
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

PREPARED STATEMENT OF THE NAVAJO NATION

Mr. Chairman, members of the Committee; on behalf of Chairman Peterson Zah and the Navajo Tribal Council, we thank you for providing this opportunity to comment on S. 1177, a bill to provide a Special Magistrate on the Indian reservation.

The Navajo Nation generally supports the bill's attempt to address the problem confronting Indian tribes today, namely, the lack of state and federal prosecutions of non-Indians committing crimes against Indians on the reservation.

S. 1177 is a landmark piece of Indian legislation, introduced to fill the gaps created by the Oliphant decision. It's purpose is to provide Indian reservations with an alternative means of prosecuting non-Indians in Indian country.

The failure of the U.S. Attorney's Office to prosecute such crimes mandates some type of alternative. The Navajo Nation would prefer legislation authorizing monies to develop tribal courts and tribal jurisdiction over non-Indians but we feel a special magistrate on the reservation is at least a small step toward Indian control of Indian reservations.

The Navajo Nation believes this step toward Indian control of Indian reservations could be furthered if the bill were amended to place more emphasis on tribal involvement in the appointment of the special magistrate. We would recommend appointing a tribal member, ideally one who is a member of the tribe's Bar Association and who is familiar with the ways of Native Americans, as the special magistrate. We would also support language making the special magistrate optional to tribes who have no other means of prosecuting the crimes by non-Indians on their reservations.

Through implementation of these amendments, we hope Tribes will be able to strenghthen their governments by assuming prosecutorial responsibilities and thereby develop in-house expertise among tribal members. Eventually, this step by step process will carry the tribes to an acceptable level of self-sufficiency.

Again, thank you for this opportunity to submit our views on S. 1177.

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